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Potential pick Ketanji Brown Jackson would make history as first federal public defender on Supreme Court

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In vetting President Biden's pick for the influential appeals court in Washington last year, senators on both sides of the aisle saw advantage in distilling the lengthy and varied legal career of Judge Ketanji Brown Jackson to two words: public defender.

Were you ever concerned that your work would lead to “more violent criminals — including gun criminals — being put back on the streets?” asked Republican Sen. Ben Sasse of Nebraska.

“Have you ever represented a terrorist at Guantánamo Bay?” pressed Sen. Tom Cotton (R-Ark.).

Democratic Sen. Cory Booker of New Jersey, by contrast, cast Jackson's role defending low-income clients as “noble work.”

“This is an ideal that goes back to Adams representing the British who were involved in the Boston Massacre,” he said. “This belief that everyone deserves a defense.”

President Biden is committed to his campaign promise to name the first Black woman to the Supreme Court. Here's a list of his top contenders. (Mahlia Posey/The Washington Post)

Jackson was named in 2021 to the appeals court and now is a leading contender to fulfill Biden's promise to name the first Black woman to the U.S. Supreme Court for the seat that will open with [the retirement](#) of Justice Stephen G. Breyer, for whom Jackson clerked.

Her experience includes more than eight years on the federal bench, tenure shaping U.S. federal sentencing policy and work as a law clerk. But it is her 2½ years as a public defender more than 15 years ago that have attracted significant attention.

If nominated and confirmed, Jackson, 51, would be the first former federal public defender on the high court and the first justice since Thurgood Marshall with extensive criminal defense experience.

Her history is touted as an asset by Jackson's supporters, including civil rights organizations that have encouraged the White House to look beyond prosecutors and corporate lawyers to fill the federal bench. But Republicans showed at her confirmation hearing last year that they could cast her work defending indigent clients as a liability.

A Washington Post review of cases Jackson handled as a federal defender — where she was assigned primarily to work on appealing convictions — shows she won uncommon victories against the government that shortened or erased lengthy prison terms. In 2006, Jackson kept out of jail an [attorney convicted of tax fraud](#) in connection with his work for a drug dealer. A year later, her efforts for a D.C. man convicted after police found an illegal handgun at his home led federal prosecutors to drop their case. And over the course of two years, she challenged the [detentions of men held after the 9/11 attacks](#) as “enemy combatants” in Guantánamo Bay, Cuba.

If nominated and confirmed, Ketanji Brown Jackson would be the first former federal public defender on the high court. (Marvin Joseph/The Washington Post)

Jackson continued that defense-centric work after moving to private practice. She filed a Supreme Court brief successfully challenging the government’s procedures for holding Guantánamo detainees and briefs in a separate pair of cases over the rights of domestic criminal defendants. In that pair, Breyer — the justice whom she could succeed — dissented and sided with law enforcement.

Jackson has emphasized her time as a public defender as a key aspect of her identity, informing the eight years she spent as a trial court judge and her more recent work on the U.S. Court of Appeals for the D.C. Circuit.

“There is a direct line from my defender service to what I do on the bench, and I think it’s beneficial,” Jackson told senators at her confirmation hearing last year.

Jackson’s decision to work in federal courts defending clients who could not otherwise afford a lawyer was the culmination of experiences stretching to her childhood, she has told audiences. Growing up in Miami, Jackson was surrounded by relatives with careers in public service. Her mother was a public school principal and her father was chief legal counsel to the Miami-Dade County School Board. Two uncles were law enforcement officers, including one who became the Miami police chief.

When she joined the federal public defender’s office in Washington in 2005, it was to better understand the inner workings of the justice system, she told senators. She said she had not gained those insights up to that point in her career. After graduating from Harvard Law School in 1996, she clerked for three judges, worked briefly in private practice and then was an attorney at the U.S. Sentencing Commission.

“I decided that serving ‘in the trenches,’ so to speak, would be helpful,” she said in written [responses to senators](#). “A position with the Federal Public Defender was a highly competitive and extraordinary opportunity to hone one’s litigation skills and to gain knowledge about critical aspects of federal criminal justice processes.”

Jackson wrote that she viewed the job as a chance to “help people in need and to promote core constitutional values” such as the right to legal representation for anyone “accused of criminal conduct by the government, regardless of wealth and despite the nature of the accusations.”

Jackson came to the public defender’s job after the [2004 Supreme Court ruling](#) that Guantánamo detainees could go to federal court to challenge being held and as cases soared into the hundreds, many out of the Washington office. She was among

academics, civil rights lawyers, public defenders and others handling the evolving area of the law.

Jackson's concentration on appeals meant she spent more time writing briefs than appearing in court for her Guantánamo clients and for others. And in that capacity, as she looked for possible errors to protest, she was surprised at how little defendants grasped the law and what had happened to them.

"They had just been through the most consequential proceeding in their lives, and no one really explained to them what they were supposed to expect," Jackson said during her Senate hearing. "So, they didn't know where things might have gone wrong."

[Possible Supreme Court nominee, former defender, saw impact of harsh drug sentence firsthand](#)

After joining the U.S. District Court in D.C. in 2013 as President Barack Obama's pick, she was known to pore over letters from defendants' relatives and colleagues. She would mark meaningful passages with a highlighter and take extra time to communicate clearly with defendants standing in front of her.

"She really tries to understand the person's role in the community and how they came to be before her," said [former law clerk Jo-Ann Sagar](#), who was a clerk for Breyer and for Justice Brett M. Kavanaugh when he was on the D.C. Circuit. "She would speak directly to them in a way I'm not sure all judges do."

A convicted lawyer and a white Mercedes

In the spring of 2006, Jackson was the public defender before appeals court judges in the case of D.C. attorney Navron Ponds.

Ponds was facing up to 35 years in jail [for fraud and tax evasion](#). His conviction came after the government determined that the mother of a client in a drug case had given Ponds a white Mercedes as a retainer but that Ponds had transferred the title to a relative to avoid paying taxes.

Ponds had turned over personal records to the government under an immunity agreement with prosecutors looking into his taxes. Jackson argued that the government should not have been allowed to use Ponds's records against him. Her argument persuaded a three-judge panel:

"The government cannot make an end-run around the Fifth Amendment by fishing for a document that will answer a question for which it could not demand an answer in oral examination," wrote Judge Judith Rogers, who was joined by Judges David Tatel and Janice Rogers Brown. The appeals panel of the D.C. Circuit found that prosecutors had to some extent violated their immunity agreement with Ponds, who had invoked his constitutional right against self-incrimination.

The panel threw out Ponds's conviction and returned the case to a lower federal court, where Ponds pleaded guilty to a lesser tax charge and was sentenced to a term of probation.

A year later, Jackson was back before the D.C. Circuit on behalf of a felon serving a seven-year sentence after being caught with a loaded firearm. Prosecutors characterized the man in court filings as a “habitual offender” and detailed his previous arrests, from intent to distribute cocaine to assaulting a police officer — crimes his initial defense attorney attributed to a lengthy struggle with drugs and alcohol.

The conviction relied heavily on testimony from a Park Police officer who had arrested the felon after a SWAT team with a warrant and a battering ram broke down the door of the home he shared with his mother. The team found a loaded 9-millimeter semiautomatic pistol in a laundry basket.

The appeals court unanimously agreed with Jackson’s argument that the defendant’s right to an impartial jury was compromised when the trial judge asked potential jurors a double-barreled question: whether they had any personal ties to anyone in law enforcement and whether they felt they still could be impartial. Jackson said that format of running two questions about possible bias together — rather than having each question answered on its own — left the defense attorney no opportunity to probe possible bias.

“Unless a prospective juror who worked in law enforcement believed that such employment would render impartial jury service impossible, neither he nor the court would have any way of knowing about this potential source of bias,” wrote Tatel, joined by Brown and Judge David Sentelle.

Prosecutors decided not to retry the defendant and released him from prison two months later.

Jackson also helped secure a plea deal in 2006 for a man accused of threatening to blow up the federal courthouse in D.C. and telling FBI agents he would “knock on your front door and teach you a lesson.” Prosecutors agreed to drop most charges against the man, who did not act on the threats. The sentencing judge went along with the plea deal to impose a sentence of time served and ensure a move to Florida, saying the defendant needed to stay away from those he threatened and get anger management counseling.

In written responses to senators’ questions about Jackson’s defense of convicted criminals and concern about their reentry into a community, she returned to the constitutional guarantee of legal representation.

“Having lawyers who can set aside their own personal beliefs about their client’s alleged behavior or their client’s propensity to commit crimes benefits all persons in the United States,” she replied. “It incentivizes the government to investigate accusations thoroughly and to protect the rights of the accused during the criminal justice process, which, in the aggregate, reduces the threat of arbitrary or unfounded deprivations of individual liberty.”

Guantánamo cases

Because of her skill crafting appellate briefs, former colleagues said Jackson was enlisted to tackle a complex, new area of law challenging the federal government’s detention at Guantánamo Bay of “enemy combatants” after the Sept. 11, 2001, terrorist attacks.

The federal public defender's office in D.C. was one of the few in the country handling the legal claims of detainees held at the offshore military base, and representation required special training and a security clearance.

Jackson's appellate work was on behalf of Khi Ali Gul, who had been captured by Afghan forces in 2002.

While Jackson's public defender colleagues flew to Cuba to meet with Gul, she drafted briefs challenging his detention by the George W. Bush administration without charge or trial. She told the court he was confined to his cell for at least 23 hours a day and experiencing "severe mental suffering with serious and potentially fatal consequences." Gul's case was eventually consolidated with those of other detainees, and he was returned to Afghanistan in 2015.

At the time Jackson handled Gul's appeal, her brother was deployed with the U.S. Army outside of Mosul, Iraq. Jackson told senators she was among the many lawyers who were "keenly aware of the threat that the 9/11 attacks had posed to foundational constitutional principles, in addition to the clear danger to the people of the United States."

When asked by Sasse whether she ever considered resigning rather than represent a detainee who could return to terrorist activities, Jackson said it was her duty. She had to refrain from undermining her clients' interests by "publicly declaring the lawyer's own personal disagreement with the legal position or alleged behavior of her client."

Jackson continued her work on behalf of Guantánamo detainees in private practice at Morrison & Foerster in Washington. She told the senators last spring that she was assigned to work on two amicus briefs because she understood the military tribunal system due to her work as an assistant federal defender.

She drafted [one brief on behalf of a group of 20 retired federal judges](#) challenging the government's detention review procedures, arguing in part that the framers of the Constitution would not have permitted use of evidence extracted via torture.

After oral argument in the case *Boumediene v. Bush* in December 2007, Jackson told an audience at [a panel discussion organized by the American Constitution Society](#) that in preparing the amicus brief, the former federal judges confronted how to focus their argument amid what they deemed an array of grave issues. "When you look at this entire scenario there are so many levels of outrage in terms of what is happening over there, that you have to kind of figure out, well, what are we going to attack," Jackson said, according to a video recording of the session.

In 2009, Jackson filed a [brief on behalf of the libertarian Cato Institute and the Rutherford Institute](#) — a nonprofit civil liberties organization — arguing that it was illegal to indefinitely detain lawful U.S. residents as "enemy combatants" in military custody. The court dismissed the case before oral argument when the Obama administration reversed course and charged the suspect in federal court.

Joseph Margulies, a Cornell Law professor and lawyer for Guantánamo Bay detainees, said Jackson's defense work was "asserting the right of the judiciary to be a legal check on the power of the president."

“What it tells me is that she is a jurist who cares deeply about the rule of law and attempts to imprison people beyond the protection of the law,” he said. “That is broadly consistent with her work as a public defender.”