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As Jackson faces senators, her criminal defense record is a target

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WASHINGTON — Senator Josh Hawley had a pointed question earlier this month for a federal appeals court nominee who, as a public defender, helped get a Pennsylvania man off death row despite his conviction for two brutal murders.

“Do you regret trying to prevent this individual who committed these heinous crimes from having justice served upon him?” asked Hawley, a Missouri Republican, as he grilled Arianna Freeman, President Biden’s pick for a seat on the Philadelphia-based US Court of Appeals for the 3rd Circuit.

Last month, Senator Tom Cotton, an Arkansas Republican, asked Nina Morrison, a nominee for a Federal District Court seat in New York, whether she was “proud that you encourage such defiance in convicted murderers” when a man she represented declared to the prison warden that he would not be executed.

Senator Ted Cruz, a Texas Republican, told Freeman she had “devoted your entire professional career to representing murderers, to representing rapists, representing child molesters.”

And Judge Ketanji Brown Jackson, the former public defender whose confirmation hearing for a seat on the Supreme Court begins next Monday, has been sharply questioned by Republicans for her work representing detainees at the US military prison at Guantánamo Bay. In a background paper on her nomination for the high court, the Republican National Committee referred to Jackson’s “advocacy for these terrorists” as “going beyond just giving them a competent defense.”

On Tuesday, Senator Mitch McConnell, a Kentucky Republican and the minority leader, said in a floor speech that Jackson had strong backing from progressive groups partially because of her history as a public defender, saying, “The soft-on-crime brigade is squarely in Judge Jackson’s corner.”

The attacks reflect what has emerged in recent months as a Republican effort to vilify and discredit Biden administration judicial nominees who have served as public defenders by

suggesting that they acted inappropriately in representing clients accused of serious, sometimes vicious crimes.

Democrats say the tactic ignores a fundamental principle of the US justice system — that everyone has the constitutional right to be represented by counsel — and effectively seeks to disqualify from the bench anyone who has taken that obligation seriously when it comes to the accused.

The Republican strategy is a response to a concerted push by the Biden administration to diversify the federal bench by nominating more people with experience in criminal defense work, many of them women of color.

It is a sea change in the world of judicial nominations, where presidents of both political parties have long shied away from defense attorneys because of their susceptibility to political attacks tied to the crimes attributed to their clients, instead selecting tough-on-crime prosecutors. The type of high-profile murder cases handled by some of Biden's nominees would have been considered disqualifying only a few years ago; now the president, who himself served briefly as a public defender early in his legal career, is actively seeking to name more jurists who have such experience, as well as to broaden racial diversity on the federal bench by naming more people of color.

The nomination of Jackson, who would be the first public defender and the first Black woman to sit on the high court, will be the biggest test yet of whether a lawyer who represented accused criminals can draw broad Republican support. Her defense work and membership on a commission that reviewed sentencing guidelines will no doubt draw scrutiny during the upcoming hearing.

But she is hardly the only candidate who has faced such condemnation by Republicans. At least 20 other lawyers with significant public defender experience have been nominated by the Biden administration, representing about 30 percent of those considered by the Senate Judiciary Committee so far during Biden's term. About half of them, including Jackson and Freeman, are women of color.

“We have never seen anything like this,” said Clark Neily, senior vice president for legal studies at the libertarian Cato Institute, who has studied the administration's push to expand the ranks of defense attorneys on the bench.

Republicans on the Judiciary Committee have almost uniformly opposed the confirmation of public defenders. As they prepare for the Jackson hearings, GOP senators say past work experience is fair game, even though the defenders may have been court-appointed in many cases to represent indigent defendants.

Senator Richard Durbin, an Illinois Democrat and chair of the Judiciary Committee, has argued that Republicans aim some of their harshest fire at “assertive women of color” to suggest they are “soft on crime.”

Democrats contend that these attacks are tied to a central element of Republicans' midterm campaign strategy, which is to blame Democrats for an increase in crime by portraying them as unwilling to punish lawlessness and as hostile to law enforcement.

Jackson's supporters say her time as a public defender was a formative part of a distinguished career — including time as a lawyer in private practice, serving as a member of the sentencing commission, and stints as a district and appellate judge — and only strengthens her qualifications. They also note that Jackson has support from law enforcement groups.

“She was a public defender, but that doesn't mean that she is soft on crime, that she's pro-criminal,” said Doug Jones, the former Democratic senator from Alabama who has been helping guide Jackson through her meetings with senators.

“There's not a single public defender ever who was pro-crime,” Jones added. “They're defending the Constitution and the rights of folks.”