



Criminal justice reformers rally for first public defender on Supreme Court

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Ketanji Brown Jackson's confirmation hearings next week could pave the way for a historic first on the Supreme Court: if confirmed, the appellate court judge will become the only former public defender to ever sit on the bench.

Some Republicans have scrutinized Jackson's work on behalf of poor, criminal defendants. But this experience in particular has energized criminal justice reformers who believe it's time for the high court to have a justice who has represented the legal system's most vulnerable defendants.

President Biden nominated Jackson in part to fulfill a campaign pledge to put the first Black woman on the Supreme Court. But the pick also represents a continuation of his efforts to bring underrepresented fields in the legal profession onto the federal bench.

The Supreme Court opened the door for the creation of the modern public defender system with its landmark 1963 decision in *Gideon v. Wainwright*, which ruled that states must provide criminal defendants with lawyers if they are unable to afford one.

But since then, no attorneys from those institutions have served on the nation's highest court. There also hasn't been a Supreme Court justice who has worked as a criminal defense lawyer since Thurgood Marshall retired nearly 30 years ago.

Biden has made an effort over the past year to diversify the federal judiciary in terms of racial and gender demographics. But he has also elevated lawyers who worked as public defenders and civil rights advocates in an effort to bring more balance to a court system that is largely overseen by judges who started out as prosecutors and corporate attorneys.

Radhika Singh, the vice president of civil legal services at the National Legal Aid and Defender Association, said that the experience Jackson brings has been sorely missing from the most powerful court in the country.

"To have someone who has seen day to day how the legal system either treats or effects or even pulls people into the system because of their level of poverty is something we haven't seen on the court and it's a perspective that's missing," Singh said.

"The lack of that on the court I think undermines trust in our legal system," she added. "It undermines trust in the rule of law and how that's being executed."

Before becoming a judge, Jackson spent two years as a federal appellate defender in Washington, D.C., between stints in private practice. She also served on the U.S. Sentencing Commission, where she helped revise penalty guidelines for drug offenses.

Some Senate Republicans have attacked Jackson and other Biden nominees over their time as public defenders, seeking to highlight their work on behalf of defendants they see as appalling.

GOP lawmakers have already begun attacking Jackson for representing a Guantanamo Bay detainee while she was a public defender and later in private practice. Sen. Josh Hawley (R-Mo.) told reporters this week that he had raised the issue with the judge during a private meeting and signaled that he would bring it up during her hearings.

"I imagine that that will be something we'll want to ask her about," Hawley said. "I'm going to have some more questions about that."

But Jackson's work as a public defender has been encouraging for criminal justice reform advocates who see a disconnect between the country's most powerful jurists and the legal system's effects amid shifting public attitudes about mass incarceration.

"I think that something that should be concerning to all of us is the very real possibility that the Supreme Court is systematically turning a blind eye to profound pathologies in the criminal justice system," said Clark Neily, the senior vice president for legal studies at the libertarian Cato Institute. "I'm hopeful that somebody with this unique background that we've never seen before on the Supreme Court might begin to shine a light on that."

Neily said it remains to be seen how the increased professional diversity on the federal courts will affect the court's handling of criminal justice issues, but that the disproportionate number of former prosecutors combined with the lack of judges who have represented criminal defendants has created enormous blindspots for the judiciary.

"If you have a wildly disproportionate number of people who have sought out work that involves putting human beings in cages, and who have become inured or at least used to doing so, it seems likely that they'll have sort of a greater level of comfort doing that when they get on the bench than the average person might have - let alone somebody who's spent the bulk of their career representing those very individuals as defense attorneys," Neily said.

Jackson's unique experience for a Supreme Court nominee has not only been a major sign of encouragement for criminal justice reformers but also created a hope that she could end up serving as a sort of spiritual leader for that movement from the bench if she's confirmed.

Abbe Smith, a law professor at Georgetown University who has spent years as a public defender and advocate for criminal defendants, said that she hopes to see Jackson respond with a full-throated defense of her work if she's confronted during the confirmation process and that it would only be the beginning of her advocacy.

"I think the U.S. Supreme Court is a kind of bully pulpit and can have enormous impact on the way judges in our states and localities rule in criminal cases," Smith said. "I hope that Ketanji Brown Jackson uses her experience and her wisdom and the power that she will have as a United States Supreme Court Justice to speak the truth about how our criminal legal system has affected individuals, their families, their loved ones and communities. Even in dissent, you can have an impact."