

# Early takeaways from Day 2 of Judge Jackson's confirmation hearing

By Amber Phillips

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Supreme Court nominee Judge Ketanji Brown Jackson testifies on the second day of her confirmation hearing before the Senate Judiciary Committee. (Jabin Botsford/The Washington Post)

Tuesday was the second day of Judge Ketanji Brown Jackson's Supreme Court confirmation hearing, but it was the first day she had a chance to respond to senators' questions — and accusations.

Here are three early takeaways; we'll update this throughout the day. [Here are takeaways from her and senators' opening statements on Monday.](#)

## 1. A forceful pushback against child-sex sentencing claims

On March 22, Supreme Court nominee Judge Ketanji Brown Jackson refuted attacks from Sen. Josh Hawley (R-Mo.) on her sentencing record on child-sex offenders. (The Washington Post)

It is the most scurrilous claim against Jackson: That as a federal judge, she has been weak on sentencing child-sex predators. Sen. Josh Hawley (R-Mo.) has been the primary driver of these claims, taking her words and sentences out of context to do it.

In the first minutes of the hearing, the top Democrat on the committee, Chairman Richard J. Durbin (D-Ill.), walked through Republicans' various criticism of Jackson, and he spent a fair amount of time on this issue.

“As a mother and a judge who has had to deal with these cases, I was thinking that nothing could be further from the truth,” Jackson said of Hawley's accusations.

She recounted how, when sentencing a weeping defendant to prison, she shared the experience of one victim of child pornography who was so paralyzed by what happened to her that she couldn't leave her house.

“I tell that story to every child porn defendant as part of my sentencings, so that they understand what they have done,” she said. “I say to them, that there's only a market for this kind of material

because there are lookers, and that you are contributing to child sex abuse. And then I impose a significant sentence and all of the additional restraints that are available in the law.”

Jackson has played a prominent role in the legal debate over how sentencing guidelines should treat people who create these images versus those who possess them. Jackson tried to get at that nuance: “Courts are adjusting their sentences in order to change for the circumstances,” she said, “but it says nothing about the court’s views of the seriousness of these events.”

As The Post’s Fact Checker Glenn Kessler has detailed, Jackson’s sentences in these cases have been squarely in the realm of other judges’ sentences — and Durbin came armed with an example of a Republican-supported judge in Missouri, Hawley’s home state, who gave a sentence in a child porn case that was shorter than what federal guidelines recommended.

## **2. Defending her role as a defender**

Jackson defends work with Guantánamo Bay detainees

Supreme Court nominee Judge Ketanji Brown Jackson on March 22 said that Guantánamo Bay detainees deserved fair representation under the U.S. Constitution. (The Washington Post)

Jackson would be the first justice in decades to have experience defending people accused of crimes, though the court regularly hears cases in which convicted criminals’ lives are in their hands. (Normally, presidents pick people who have experience on the opposite side of the courtroom, as prosecutors.)

Republicans have used her relatively unusual background — plus the fact liberal groups support Jackson — to argue that she is soft on crime. It is a potentially potent political attack, given that Republicans see rising crime rates across the nation as a major midterm issue.

Jackson, led by Democratic senators, spent a good chunk of her morning explaining what a public defender is, her work defending Guantánamo Bay detainees and — notably — how she appreciates the role of police.

“Federal public defenders don’t get to pick their clients,” she said of her job representing people who are charged with a crime and can’t afford their own lawyer. “They have to represent whoever comes in, and it’s a service.”

She said the role gave her empathy later on, when sentencing people convicted of a crime. As a public defender, she had observed how little defendants understand the criminal justice process, and as a result, “tend to be bitter and feel as through the justice system has wronged them.”

So as a judge, she took time to tell defendants what was happening and explain the impact their actions had on society. “And I don’t know that I would have done that if I had not been a criminal defense lawyer,” she said.

Then she pointedly discussed family members who have served as police officers, including an uncle who became police chief in Miami, and who have been in the line of fire. “So crime and the effects on the community and the need for law enforcement, those are not abstract concepts or political slogans to me,” she said.

As far as her work defending Guantánamo Bay detainees, she's been asked in a previous confirmation hearing if she ever defended a terrorist.

As The Post's Ann Marimow explains, when Jackson was a public defender, she got tapped to help challenge the federal government holding "enemy combatants" after the Sept. 11, 2001, terrorist attacks. Often it was uncharted ground in criminal law. "Lawyers were trying to help the court figure out what the executive's power was in this circumstance," she said Tuesday, emphasizing these detainees had a constitutional right to representation.

But she also tried to distance herself from her work in that area, which continued when she worked in private practice.

"My responsibility was to make my client's arguments," she said, of writing a brief for the libertarian Cato Institute and others, arguing that the government shouldn't have the ability to hold an enemy combatant indefinitely. She explicitly said that doesn't represent her own views.

### **3. Trying to pin her as a liberal**

"Do the First Amendment free speech protections apply equally to conservative and liberal protesters?" Sen. Charles E. Grassley (R-Iowa) asked her. (Yes, Jackson answered.)

"Do you believe the individual right to keep and bear arms is a fundamental right?" he asked next. (The Supreme Court has established that right, she said.)

What about court-packing, Republicans wanted to know? (She drew on the confirmation hearing of Justice Amy Coney Barrett, saying she isn't in a position to make policy about the size of the court.)

Sen. John Cornyn (R-Tex.) tried to press her on her thoughts about the Supreme Court creating a right to same-sex marriage. (In the time-honored tradition of nominees dodging sharing their views, Jackson said these issues could come before the court.)

Jackson has been a favorite of liberal advocacy organizations. "So many of these left-wing radical groups that would destroy the law as we know it declared war on [potential Supreme Court pick] Michelle Childs and supported you," Sen. Lindsey O. Graham (R-S.C.) said.

Jackson responded to many of these attacks by urging senators to look at her lengthy record, including nine years as a judge.

"I don't think anyone can look at my record and say it is pointing in one direction or another, that it is supporting one viewpoint or another," she said.