

The Ketanji Brown Jackson Hearings May Be Only the Beginning

Amy Davidson Sorkin - The New Yorker, April 9, 2022

The final Senate confirmation vote of 53–47 sparked joy and relief that the ugly part was over, at least for Jackson. The rest of the country may not be so lucky. Just before the Senate Judiciary Committee voted, this week, on Judge Ketanji Brown Jackson’s nomination to the Supreme Court—one of the final hurdles before her confirmation by the full Senate, on Thursday—Thom Tillis, Republican of North Carolina, offered a personal reminiscence from the hearings. “I got an opportunity during one of the breaks to go up to her parents, and I told them that they clearly raised her right,” Tillis said. “They should be very proud.” Then he voted against her, after a multiday spectacle during which Republican senators portrayed Jackson as a “dangerous” judge engaged in an extremist mission to undermine public safety on behalf of child-sex offenders, terrorists, and shadowy moneyed figures on the far left. Indeed, Tillis’s admiration for parents who had reared such a purported threat to the Republic would be befuddling if the falsity of the attacks against her were not so evident. The real mystery is why the senator thought that he had the standing to offer Jackson’s parents anything other than an apology.

Ellery and Johnny Brown, two teachers who became, respectively, a high-school principal and a lawyer, raised a daughter who is now the first Black woman confirmed to the Supreme Court in its two-hundred-and-thirty-three-year history. (She will not be sworn in right away; Justice Stephen Breyer, whom she will succeed and for whom she once clerked, plans to serve until the end of the Court’s term this summer.) None of her achievements, from her Harvard degrees to her time as a federal public defender and a judge, is news to them. She is a highly qualified jurist who has the respect of liberal and conservative colleagues. Jackson and President Joe Biden watched together from the White House as the Senate voted, and their expressions as the eyes came in—the final tally was 53–47—conveyed joy and relief that the ugly part was over, at least for Jackson.

The rest of the country may not be so lucky. The manner in which the Republican Party’s elected leaders approached the confirmation—feverishly and recklessly, with little regard for the costs—offered a dispiriting prelude to how Congress may operate if, as seems all too possible, the G.O.P. takes control of either chamber, or both, in the midterm elections this fall. Republicans’ claims about Jackson’s sentencing in child-pornography cases were especially detached from reality: her record is well in the mainstream relative to that of other federal judges. In attempting to slander her, Republican senators may also have done damage in the broader area of criminal-justice reform, dismissing all notions of judicial discretion and proportionality, let alone rehabilitation. At times, they seemed more like a focus group testing Democrats-are-soft-on-crime campaign ads than like legislators providing advice or consent. At one point, Ted Cruz suggested that supporting Jackson was comparable to calling for the police to be abolished.

If some senators, such as Cruz and Josh Hawley, seemed especially eager to enmesh themselves in conspiracy theories (the concept that the Democratic Party is one big child-trafficking ring is a QAnon tenet), the attacks were a group effort. The hearings further erased the distinction between senior Republican members of the Judiciary Committee, such as Chuck Grassley, and Representative Marjorie Taylor Greene, who said that the three G.O.P. senators who voted to confirm Jackson—Susan Collins, Lisa Murkowski, and Mitt Romney—were “pro-pedophile.”

In a speech on the Senate floor the day before the confirmation vote, Tom Cotton, after a mini-rant about the sentencing issue, said, “Judge Jackson has also shown real interest in helping terrorists.” By this he meant that, as a federal public defender and, to a lesser extent, in private practice, she had worked on the cases of four men detained at Guantánamo Bay. None of them was ever put on trial. Cotton was particularly exercised that some of the briefs she filed on the men’s behalf contained allegations that they had been subjected to “American war crimes.” The crimes alleged were torture, something that the Senate itself has documented with regard to a number of Guantánamo detainees—raising the question of whether Cotton thinks that torture isn’t a crime, or if he believes that a lawyer who wants to be on the Supreme Court should pretend that such things never happen. Either position is perilous. Cotton continued, “The last Judge Jackson”—Robert H. Jackson—“left the Supreme Court to go to Nuremberg and prosecute the case against the Nazis. This Judge Jackson might have gone there to defend them.”

Gary Bass, a professor at Princeton who has written extensively on war crimes, observed that Cotton invoked Robert Jackson “understanding nothing about what he did at Nuremberg. Justice Jackson negotiated the rules which gave the Nazi defendants the right to defense counsel, and in his opening address emphasized that they would get ‘a fair opportunity to defend themselves.’ ” One of his most enduring opinions was his passionate dissent in the Korematsu case, from 1944, in which the Supreme Court, to its shame, effectively sanctioned the internment of Americans of Japanese descent. (The Court finally renounced the decision in 2018, when Donald Trump’s efforts to institute a “Muslim ban” made it newly relevant.) Robert Jackson called the internment “racial discrimination,” and warned of the danger of putting aside constitutional rights in the name of wartime exigency. It’s Ketanji Brown Jackson who is carrying on his legacy—not Cotton.

Some senators used the hearings to practice other electoral gambits, including those related to gender identity, a topic currently providing campaign fodder for Republicans such as Florida’s governor, Ron DeSantis. Senator Marsha Blackburn asked Jackson to define “woman.” After the judge demurred—a reasonable move, given the biological and legal complexities—Blackburn and her colleagues practically exulted. Cruz asked Jackson how she could possibly rule on cases involving gender if she couldn’t “determine what a woman was.”

“Senator, I know that I am a woman,” Jackson told him. “I know that Senator Blackburn is a woman. And the woman I admire most in the world is in the room today—my mother.” It was an answer that reached not only back to her childhood but to Sojourner Truth’s declaration

“Ain’t I a woman?” and forward to what, with any luck, will be decades on the Court. Amid all the partisan noise, Jackson had her own message. She knows who she is, and doesn’t need any senator to tell her. ♦