

**Senator Richard Durbin  
Opening Statement  
Nominations Hearing  
March 21, 2022**

Judge Jackson—as I said, thank you again for being here today with your family and friends.

The Supreme Court has a long and storied history. Its ranks have been filled by many superb Justices whose contributions to the rule of law have stood the test of time.

But the reality is that the Court’s members, in one respect, have never really reflected the nation that they served.

When the Supreme Court met for the very first time in February of 1790 in the Exchange Building in New York, there were nearly 700,000 slaves without the right of citizenship in this new nation of nearly four million people. Neither African Americans nor women had the right to vote. There was no equal justice under the law for a majority of people living in America.

In its more than 230 years, the Supreme Court has had 115 Justices.

108 have been white men. Just two Justices have been men of color. Only five women have served on the Court—and just one woman of color.

Not a single Justice has been a Black woman.

You, Judge Jackson, can be the first.

It's not easy being the first. Often, you have to be the best, and in some ways the bravest. Many are not prepared to face that kind of heat... that kind of scrutiny... that ordeal in the glare of the national spotlight.

But your presence here today, your willingness to brave this process, will give inspiration to millions of Americans who see themselves in you.

As I mentioned to you, I was at the steps of the Supreme Court this morning to see the rally in support of you. There were so many young, African American women and law students there, seeing your pursuit as part of their dream.

In other important ways, though, you are no different than many nominees who have come before us.

President Biden nominated you because he knew your qualifications are outstanding. This committee knows you. You have appeared three previous times, and each time, you have been confirmed with bipartisan support.

And your professional record and life experience tell us what kind of lawyer, what kind of judge, and what kind of person you really are.

Your guiding principles can be found in your life and your work:

- That the Constitution must work for all Americans, not just the wealthy and powerful;
- That judges must show no favoritism;
- And that the Judiciary must live up to those words emblazoned above the entrance to the Supreme Court: Equal Justice Under Law.

So today is a proud day for America. We've come a long way since 1790. And we know that we still have a long way to go to form a more perfect union.

It's a moment that brings to mind something that the late Senator from Illinois, Paul Simon, my friend, said to Judge Ruth Bader Ginsburg at her nomination hearing.

He said: "You face a much harsher judge . . . than this Committee, and that is the judgment of history. And that judgment is likely to revolve around the question: Did she restrict freedom or did she expand it?"

I return to this statement time and again because it asks a vital question:

How will history judge us?

Judge Jackson, I have no doubt that history will remember you as a Justice who never stopped working to defend the Constitution.

But I also ask the members of this Committee—as we begin this landmark confirmation process—to consider how history will judge each Senator as we face our constitutional responsibility to advise and consent.

This moment also brings to mind something President Barack Obama—another trailblazer—said of a fellow Illinoisan, when the late Justice John Paul Stevens announced his retirement.

President Obama said: “[W]hile we cannot replace Justice Stevens’ experience or wisdom, I will seek someone...with similar qualities—an independent mind, a record of excellence and integrity, a fierce dedication to the rule of law, and a keen understanding of how the law affects the daily lives of America.”

Much like Justice Stevens, we cannot replace Justice Breyer.

But with you, Judge Jackson, we have a nominee who embodies the same qualities as both of these outstanding Justices.

You are independent-minded—and understand the critical importance of judicial independence.

Your record is one of excellence and integrity—from your championship debate team at Miami Palmetto Senior High School...to Harvard and Harvard Law School...to your three judicial clerkships...to your work as a federal public defender, a lawyer in private practice, a member of the Sentencing Commission, a federal district and circuit judge.

Throughout your career, you have been a champion for the rule of law. Determined to get it right even at the risk of public criticism.

As a member of the United States Sentencing Commission, a bipartisan group which reflected the spectrum of American thinking on law enforcement, you set out to make policy that truly represented congressional intent when it came to making federal criminal sentencing fairer.

And you did it by finding bipartisan common ground. During your tenure on that Commission, 95 percent of the Commission's votes were either unanimous or a consensus.

For example, the Commission implemented the *Fair Sentencing Act*—a law I negotiated with then-Senator Jeff Sessions that reduced the infamous 100-to-1 crack-powder sentencing disparity—and you joined every one of your colleagues to make that change to the Sentencing Guidelines retroactive.

You gave a powerful speech, and I'm going to quote it. You said, "there is no excuse for insisting that those who are serving excessive sentences under the long-disputed and now discredited prior guideline must carry on as though none of this has happened." The vote in favor of retroactivity was unanimous on the Commission. Both Republicans and Democrats shared your view.

And you have gone to great lengths to explain how the law affects real people.

Indeed, with your nomination, we can be confident that the Court, its role, and its decisions will be more understandable to the American public.

In your time on the bench, you have taken the time to explain your decisions and their consequences.

When you were before this Committee last year for your D.C. Circuit hearing, you described how you, quote, “take extra care to communicate with” parties.

You added, and I quote: “I speak to them directly and not just to their lawyers. I use their names. I explain every stage of the proceeding because I want them to know what is going on.”

And as a result of that approach, you have made the law more approachable, to litigants and American people.

The cameras and the lights here today can make it easy to forget that, at its core, the responsibility you seek is one of service. And I am fully confident you will serve Americans from all walks of life, and all backgrounds, fairly and faithfully.

Now there may be some who claim—without a shred of evidence—that you will be a rubberstamp for this President.

For these would-be critics, I have four words: Look at the record.

Your complete record has been scoured by this Committee on four different occasions: all of your nearly 600 written opinions, read and re-read; 12,000 pages of transcripts, meeting minutes, and other materials from the Sentencing Commission; your sworn testimony before this committee less than a year ago; every published and reported word you have written or spoken; your detailed answers to lengthy questions.

For those who say they need more, I would answer that you have sat down personally with every member on this dais of the committee – Democrats and Republicans. A fair review of all of this makes clear your values and your guiding principles.



You have ruled for and against Presidents and administrations of both parties.

You have ruled for prosecutors and for defendants.

You've ruled for workers and for their employers.

And you have been faithful to the law, not to any person or political cause.

Now there may be others who allege that you are before us today as the product of a campaign of dark money groups.

Once again, your record—and the process that led to this nomination—belie that claim.

To suggest that you are here merely because an organization supports you ignores your qualifications and the broad range of support you bring to this.

In selecting you as his nominee, President Biden undertook a transparent selection process. He sought the input of Senators from both parties.

Senator Grassley and I met in the Oval with the President. He invited us to proffer any nominees that we cared to do.

And at the end of the day, the President alone chose you.

He has put his faith in you to deliver justice on the highest level of the court. I share that faith.

In announcing your nomination, the President spoke to many reasons that you deserve to sit on the High Court.

He noted the perspective you'll bring —as a former member of the Sentencing Commission...as the first Justice since Thurgood Marshall with considerable criminal defense experience...and as only the second current Justice to serve as a federal trial court judge.

He also noted your upbringing and the fact that you come from a law enforcement family.

Yet, despite that shared family experience...and despite your record, we have heard claims that you are, quote, and “soft on crime.”

These baseless charges are unfair. A conservative National Review columnist called claims brought by one of my colleagues “meritless to the point of demagoguery.” They fly in the face of pledges my colleagues made that they would approach your nomination with civility and respect. And fact checkers, including the Washington Post, ABC News and CNN, have exposed some of these charges as falsehoods.

Critics have even stooped to accusing you of sharing the views of clients you represented - even though they should know that your work as an attorney was in service to the Bill of Rights and the Constitution’s promise of effective assistance of counsel.

Would law enforcement officials and organizations—including the International Association of Chiefs of Police, the National Organization of Black Law Enforcement Executives, and the Fraternal Order of Police—have endorsed your nomination if you were soft on crime? Of course not.

I am confident the American people will see through these attacks and any other last-minute desperate attempts to derail your confirmation.

In closing, I want to share the words of one more Illinoisan if you don't mind, if you bear with me. Another famous one named Abraham Lincoln.

In August 1864, at the height of the Civil War, President Lincoln addressed the 166th Ohio Regiment.

Lincoln said to the soldiers, and I quote, "I happen temporarily to occupy this big White House. I am living witness that one of your children may look to come here as my father's child has."

Judge Jackson, we are all just temporary occupants—of the Senate... the House... even with a lifetime appointment to the highest court in the land.

You, Judge Jackson, are one of Mr. Lincoln's living witnesses of an America that is unafraid of challenge... willing to risk change... confident of the basic goodness of our citizens.

And you are a living witness to the fact that, in America, all is possible.

I now recognize my colleague and friend, the Ranking Member, Senator Grassley.

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