



## Justice Brown-Jackson's Confirmation to the Supreme Court

**One doesn't have to operate with great malice to do great harm. The absence of empathy and understanding are sufficient. – Charles M. Blow**



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**M**y five-year-old asked one morning over Cheerios: “Why are we here?” I hid my surprise and pivoted to the old “When a mommy and a daddy love each other very much...” but he’s too quick for me: “Not how!” he insisted. “Why? Why are people? Why do we exist?” In an un-caffeinated fugue, I mumbled something to the effect of: “To help all other people, as much as we can, wherever we are.” I do not know from where my brain mustered such an answer, but upon reflecting (over coffee), I think I can figure it out.

I have spent my professional career, and some of my academic career, surrounding myself with public defenders. It gave blueprints to my vague sense of service to others. It retrained my brain to frame all of life’s questions differently. Which is why it is so remarkable that Ketanji Brown-Jackson is our newest Supreme Court appointee.

All of the Justices on the Highest Court come from

academically prestigious backgrounds. They’ve studied philosophies of law. They’ve clerked for other Supreme Court justices and picked apart jurisprudence in every way imaginable. But only KBJ comes to us with a background of public defense. In that role, she would’ve been committed to zealous advocacy, but hopefully all defense attorneys do that. But she didn’t have the liberty to choose those for whom she zealously advocated – the indigent come to the public defender’s office as they are. The public defender must meet them there. Public defenders must learn their client’s story from the beginning – the good, the bad, the sometimes incredibly ugly. The public defender must seek to understand, must empathize, must counsel. Public defenders learn how to be the almost constant bearers of bad news into lives already plagued and punctuated with it. Public defenders must learn how to redefine success both in courtroom outcomes and in marking progress in their clients’ lives. To comfort and console strangers’ families on the fly. To make the stories they’ve collected come alive for people who don’t have time for them, and who probably don’t care. To disabuse others of their often-binary perceptions of the world. Public defenders perform the act of love that is standing beside a terrified fellow human upon whom judgment is being passed and know that not only is the public defender the only person in the room on



their side, but also that the way in which they've done their job is the only thing between that terrified human and what happens to them next. It is not for the faint-hearted. And no one who has done this act of service is ever the same afterwards. They will always see the world differently; they will always frame the question in a way that centers other human beings and their often-overlooked lives.

It is a very big deal to those who work in public defense that Ketanji Brown-Jackson is the appointee, not just because we want to see our own succeed, but because we know that those who have done this job cannot go back to seeing the world in only black and white, distilled apart from the messiness that is the human existence.

Being able to see the world in shades of grey isn't a bug; it's a feature. And using that feature as a public defender is a privilege. Not just because there is value in service to others, but because as public defenders, the job is not to expedite matters through the courts. We don't grease the wheels that churn out new convictions, but rather throw sand in them, to afford everyone the time that is warranted to process a life-altering event. That's what getting charged with a crime is, no matter who you are. And when it's our job to make sure things are done properly and to the best of EVERYONE in the system's ability, we make everybody take the time to really see the person accused. We are not required to bill anyone for our time, and there's no bottom line to answer for. We don't compete with anyone, and we will not be hurried.

Which is not to say that every day in the PD's office isn't triage – it absolutely is. The job exists at the intersection of the myriad of ways society fails our citizens, especially those who have the least resources available to them. Mental health and drug and alcohol crises often rule every day and require on-your-feet problem-solving. But it isn't triage in a vacuum, at least, it doesn't have to be. I realize there is a vast amount of privilege in being permitted to write this from the vantage point of a well-run, long-established public defender's office in a wealthy county. Many counties aren't so lucky and tend to leave a trail of burnt-out, under-paid, frustrated litigators in their wake. But the public defenders I've met from all over this country come to the job with a view to collaboration and collectively working to improve the system and protecting the dignity of the accused.

That's what public defenders are crossing their fingers for KBJ to do. While Ketanji Brown was in college, her uncle was sentenced to life in prison for a possession of cocaine charge. It clearly colored her experience of the criminal

justice system, as evidenced by her undergraduate senior thesis submitted at Harvard in 1992: *The Hand of Oppression: Plea Bargaining Processes and the Coercion of Criminal Defendants*. Often, the measure of how much one loves something is how passionately one labors to make it better. And Justice Brown-Jackson spent her life doing that for the criminal justice system. When she was a member of the Sentencing Commission from 2010-2014, she helped reduce the guidelines on crack cocaine. She handled appeals for years as a federal public defender in Washington, D.C., shortening and overturning sentences for indigent accused. Witnessing firsthand the irreparable damage that can be done by the system is one of the first steps in finding the massive will it takes to improve it. Humanizing the system is not a popular stance in the face of cries for "law and order," especially when judges must withstand smears by those for whom those smears are politically advantageous, whether during election cycles or confirmation hearings.

During those hearings, that Ketanji Brown-Jackson was a Public Defender was used against her. Some told the world that public defenders' hearts "are with the criminal defendants," as though that's a bad thing. Well, my heart IS with the criminal defendants; my heart is with the accused. Because without the work of public defenders holding the system accountable, every one of us could become the accused. Unless the system is held to its highest standards by public defenders who care very much, it has permission to run over the least of us, and after the least of us, it will run over the rest of us. District Attorneys in trials like to introduce themselves to the jury as the side that represents the Commonwealth of Pennsylvania. But public defenders represent the Commonwealth of Pennsylvania, too, just one at a time. KBJ knows this; she's lived it. May her heart always stay with the criminal defendants.

