

GUEST ESSAY

What Kind of Story Will Ketanji Brown Jackson Tell Her Fellow Justices?

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**By Linda Greenhouse**

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In 1992, months after Justice Thurgood Marshall retired from the Supreme Court, Justice Sandra Day O'Connor published an appreciative essay in the *Stanford Law Review* titled "The Influence of a Raconteur."

She described sitting at the justices' conference table with the older man, a hero of the civil rights movement and the first Black justice, listening to the stories he told from his action-filled life. The experiences he recounted were "a source of amazement and inspiration," she wrote, not only for what they revealed about him "but also because of what they instill in, and ask, of us." She said she found herself "hoping to hear, just once more, another story that would, by and by, perhaps change the way I see the world."

I was touched by the essay when I first read it, but also puzzled. If I had been asked to name justices who were immune to Thurgood Marshall's influence, Justice O'Connor, who had been on the court for 11 years and had served with him for 10 years, would have been on the list. She opposed affirmative action, and her states'-rights orientation made her antagonistic to federal court review of state criminal justice issues. I was taken aback by her first line in a 1991 majority opinion that rejected an appeal from an inmate on Virginia's death row. "This is a case about federalism," she declared. Justice Marshall dissented.

And yet. By the time of her own retirement in 2006, Justice O'Connor was in a very different place. She wrote the majority opinion that preserved affirmative action in university admissions. She modulated her views on federalism. It would be ridiculous to ascribe Justice O'Connor's migration in late middle age solely to the influence of Justice Marshall, who died in 1993. But it would be equally ridiculous to discount his influence entirely. Why not take her at her word? She must have sensed something in 1992, a pull in a different direction.

Could President Biden's Supreme Court nominee, assuming her confirmation, inspire any of her new colleagues to see the world in a different way?

There doesn't seem to be a Sandra Day O'Connor lurking within today's carefully constructed conservative supermajority, and the heroic trajectory of Thurgood Marshall's life is not Judge Ketanji Brown Jackson's story. It's fair to say that she has more in common with the justice she has been named to replace. Like Stephen Breyer, she was a star student at an excellent public high school. Her father, like his, worked as a lawyer for a big-city school board (Miami in her case, San Francisco in his). Success at Harvard Law School propelled them both to a Supreme Court clerkship (in fact, she clerked for him). Justice Breyer is often referred to as the father of the federal sentencing guidelines and served on the original United States Sentencing Commission, where she later served as vice chair.

In drawing these parallels, I have deliberately not emphasized race. Yes, her nomination fulfills the president's campaign promise to appoint a Black woman, the first to sit on the Supreme Court. While that's cause for celebration, it shouldn't obscure the other kinds of diversity she would bring to the court.

Diversity has many dimensions, perspective among them. That she would be the first former public defender to sit on the court has received wide notice, less so the fact that as a public school graduate she would be a rarity among the justices. Justice Breyer's departure will leave only two, Elena Kagan, who attended the highly selective Hunter College High School in Manhattan, hardly a typical public school, and Samuel Alito, who went to Steinert High School in Hamilton Township, N.J., near Trenton, his hometown. Every other member of the court is a graduate of a Catholic high school, a striking but little-observed fact at a time when cases concerning public and religious schools and the relationship between the two are prominent on the court's docket.

Justice Breyer's wife, Joanna, is a clinical psychologist who during her active career specialized in working with children being treated for cancer at the Dana-Farber Cancer Institute in Boston. Does having a medical professional in the family account for Justice Breyer's emphasis on facts and evidence in his opinions on medical subjects? With medical questions hardly about to disappear from the court's docket, it's worth noting that Judge Jackson's husband, Patrick, is a surgeon. (Justice Sonia Sotomayor's brother, Juan, is a doctor with an allergy practice in upstate New York.) Some conservative justices seem to assume that doctors don't act in the interest of their patients, whether performing abortions or administering vaccines. Maybe Judge Jackson will be able to persuade them otherwise.

Or maybe not, but my point is that we cheat ourselves out of a full appreciation of what a person brings to the court if race is our only focus. On the day of Judge Jackson's nomination, Curt Levey, president of the right-wing interest group Committee for Justice, put out a statement that was as preposterous as it was predictable. "Jackson should be asked about her views on race," the statement said, adding that "at a time when a major affirmative action case is on the Supreme Court's docket and our nation is debating whether equality or equity should be the governing anti-discrimination standard, we hope that senators will ask Judge Jackson about her views on equity, racial preferences, disparate impact and the like."

Maybe it's only white nominees who are not expected to answer questions about pending cases. Maybe I missed other news releases from the Committee for Justice, but I don't remember Mr. Levey asking senators to drill down on the views on racial issues held by President Donald Trump's three Supreme Court nominees — Neil Gorsuch, Brett Kavanaugh and Amy Coney Barrett. Don't white Supreme Court nominees also have a race?

Thurgood Marshall, born into segregation in 1908, was already a Supreme Court justice when Ketanji Brown was born 62 years later. She will walk through the doors that he opened. But her life story is not without power. She thrived at an integrated high school — most public schools in the United States remain racially segregated — where she was class president and a star debater, despite the lowered expectations that white administrators had for her.

Her parents attended historically Black colleges, building a solid middle-class life for their children's future. Her teenage dream was to be a judge. By 2012, when the country had a president determined to diversify the federal courts, Judge Jackson had walked through every open door and was ready for Barack Obama.

It's a quintessentially American success story. Thinking about what her role on the court might be, is it fanciful to suppose that some of her colleagues, age mates who checked the same boxes on their way to the top, might look at Ketanji Brown Jackson and see themselves? Perhaps in the very familiarity of her path to the Supreme Court — a story that to others might look extraordinary — might lie its ability to inspire, or at least to prompt conservatives who are sure of what they think to think again. No, I don't expect her to change the court. But she may well change the conversation, and that's a start.

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