



Guilty by association

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Defending the accused shouldn't be a mark of shame.

But in the world of politics, there may not be a more loathsome creature than a criminal defense attorney.

I've been thinking about that these past few weeks as I watched Republican senators attack U.S. Supreme Court nominee Ketanji Brown Jackson and Democrats assail Illinois GOP gubernatorial hopeful Richard Irvin.

Their transgressions? At some point in their careers, they defended people accused of crimes. Never mind that our Constitution gives defendants an absolute right to legal counsel.

In our monochromatic world of soundbite politics, prosecutors are good and defense attorneys are bad.

The last person to serve on the U.S. Supreme Court with any experience as a defense attorney was Thurgood Marshall, who retired from the bench 31 years ago. And his work as a defense attorney ended in the 1950s.

That's a long time to go without anyone bringing the perspective of a defense attorney into deliberations.

According to a study by the libertarian think tank Cato Institute, defense attorneys are underrepresented among federal judges. As of April 2021, 318 former prosecutors were sitting as federal judges, more than one-third of the 880 total across the country. This was followed by 243 lawyers who had represented the government as "noncriminal courtroom advocates." Among the smallest fractions of those who became federal judges were former criminal defense attorneys – about 76 total – and former public defenders, who numbered only 58, less than 7% of all judges.

Considering law is a diverse field encompassing nearly every aspect of the human condition, it is disappointing that we draw our justices from such a shallow pool.

The Democratic Governor's Association launched a television ad against Irvin citing his past as a defense attorney.

In a breathless voice, a narrator says Irvin defended people accused of domestic abuse and sexual assault, as if they have unearthed some hidden character flaw. Well, lawyers defend people. Sometimes they are innocent and sometimes they are guilty – but all have a right to effective counsel.

The attack is particularly disappointing considering that Gov. JB Pritzker is a lawyer himself. He ought to know how important the role of defense attorneys is in our society. The same could be said of the multitude of Republican lawyers on the U.S. Senate Judiciary committee taking jabs at Ketanji Brown Jackson.

A couple decades ago, I covered an Illinois Supreme Court race in which one candidate boasted that he had never been a defense attorney.

I found it disappointing that this Harvard-educated lawyer embraced the idea of never having defended anyone as a mark of pride, something that would make him a better Supreme Court justice.

After all, when choosing a judge, don't we want someone with diverse experiences in a variety of areas of law?

I've spent years tracking police misconduct cases. And in my podcast *Suspect Convictions* I took an in-depth look at numerous cases of wrongful convictions. Although it is nothing new, it remains a national shame. Our country sends innocent people to prison.

Just consider that a 2019 report by the National Registry of Exonerations found between 2% and 10% of convicted individuals in U.S. prisons are likely innocent. Plus, 2,666 people have been exonerated in the U.S. since 1989.

People later proven innocent have served more than 23,950 years in prison so far. Out of every 100 people sentenced to death, four are likely innocent, but only two get exonerated.

Protecting the innocent should be the highest calling of those serving in the legal profession. I've met many bright, talented and committed defense attorneys. But I've also met some who have turned their presence as a safety net for the wrongly accused into a hammock of low expectations.

Many of those wrongly accused end up wrongly convicted because of less than zealous work by their attorneys. This underscores the critical need for a vigorous defense bar. We should be praising those who choose this important work – not casting aspersions on their character and fitness for office because they chose to serve defendants.

One of the most zealous advocates for the accused that I have met is John Hanlon, who recently retired as director of the Illinois Innocence Project. Hanlon expressed disgust for the recent political attacks against members of the defense bar.

"It's politics. That's what's going on, pure politics," he said. "It is repeated over and over again depending on what the cycle is and what office the person is seeking. They try to dirty them up with the alleged acts of their clients. And that's just a shame."

Former Scott County, Iowa, prosecutor Bill Davis said it smacks of hypocrisy.

"The people who attack defense attorneys are the same ones who extol the Founding Fathers. Have they forgotten that John Adams represented the British soldiers involved in the Boston Massacre? Our founders made a right to counsel a basic constitutional right. The system would not work without defense attorneys.