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Opinion: Republicans' buffoonish, disingenuous attacks on an Innocence Project attorney

Sen. Josh Hawley (R-Mo.) on Capitol Hill in D.C. on Feb. 22. (Demetrius Freeman/The Washington Post)

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This week, Republicans on the Senate Judiciary Committee lined up to pummel Innocence Project attorney Nina Morrison, President Biden's nominee for the U.S. District Court for the Eastern District of New York. Morrison has helped free about 30 innocent people from prison in her career and would bring desperately needed balance to a federal judiciary loaded with ex-prosecutors.

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Rather than recognize her qualifications, Republican after Republican beclowned themselves with misleading attacks and self-serving theater.

Start with Sen. Josh Hawley (R-Mo.), who solemnly told Morrison, "I will oppose you and anyone else the administration sends to us who do not understand the necessity of the rule of law." Hawley's emphasis on "the rule of law" was interesting, given that at that very moment, his campaign was hawking trinkets emblazoned with the senator's fist-pumping efforts to overturn the 2020 election.

Sen. Ted Cruz (R-Tex.) once represented a man who had been wrongly convicted and nearly executed, the late John Thompson. It's one of the more decent things Cruz has done. So one might think Cruz would have some admiration for Morrison. But Cruz has never let his backbone inhibit his posturing. "The whole of your record is deeply disturbing," he scolded. "Skyrocketing crime rates ... are the direct result of the policies you've spent your entire lifetime advancing," claimed Cruz, about a month after he begged forgiveness for once criticizing the lawless Capitol mob.

Sen. Tom Cotton (R-Ark.) berated Morrison for representing Ledell Lee, an Arkansas man who was executed in 2017. Four years after the execution, new testing found DNA on the murder weapon that belonged neither to Lee nor the victim, according to lawyers. Cotton seemed astounded that Morrison could still believe Lee might be innocent, given that Lee was convicted with eyewitness testimony. Morrison calmly pointed out that faulty eyewitness testimony is the leading cause of wrongful convictions.

Unchastened, Cotton demanded to know why Morrison thought “the courts somehow overlooked” Lee’s innocence for so long. But we’ve seen exonerations of people who served 20, 30, even 40 years, some after courts reviewed their cases a dozen or more times. Worse, in Cotton’s home state, once a prisoner exhausts his appeals, the state’s judicial system offers no way for him to get back in court even if he discovers compelling new evidence of his innocence.

Sen. Mike Lee (R-Utah) criticized an op-ed Morrison wrote for the New York Times about prosecutor misconduct, because Morrison didn’t emphasize that such misconduct is rare. But misconduct is *documented* only in a small percentage of cases. That’s likely because there’s little incentive for anyone — including defense attorneys — to report it. And Morrison’s essay criticized the fact that even when prosecutorial misconduct is reported and proved, the offending prosecutors are rarely punished. That’s the surest sign of a broken system.

It isn’t as if the Utah senator isn’t aware of perverse incentives. He has long decried their effect on welfare recipients. He just seems oddly uncurious about how they might affect prosecutors.

Finally, Republican senators tried to make hay of the fact that Morrison has advised progressive prosecutors such as Kim Gardner in St. Louis and Larry Krasner in Philadelphia. In fact, there’s zero evidence of any link between crime rates and progressive prosecutors and their policies; murders are also soaring in cities with conservative or traditional prosecutors; and voters reelected both Krasner and Gardner by large margins. (Incidentally, murders and shootings fell significantly in St. Louis last year.) But even setting all that aside, the criticism is still nonsense. As Morrison pointed out, she advised those prosecutors only on conviction integrity units — the teams of attorneys who seek out and fix wrongful convictions.

If these Republicans truly cared about the rule of law, they would be heaping praise on attorneys such as Morrison. As with any other institution, we improve the criminal justice system by exposing and correcting its flaws, not by pretending those flaws don’t exist.

The policies people such as like Morrison recommend to uproot the causes of wrongful convictions — such as stronger rules ensuring prosecutors share all evidence with the defense, tighter controls on cognitive bias in forensics and restrictions on testimony from jailhouse informants — can also help apprehend and convict the real perpetrators before they strike again. When police and prosecutors can’t use quack experts and jailhouse snitches to confirm shaky theories — when they’re forced to remain open-minded to all possible suspects — they’re more likely to follow the evidence.

According to a 2021 Cato Institute study, former prosecutors and government attorneys outnumber former defense and civil rights attorneys on the federal bench by about seven to one. There hasn’t been anyone on the Supreme Court with significant criminal defense experience in 30 years. The Biden administration deserves praise, not scorn, for addressing that imbalance.

For senators such as Cruz, Cotton, Lee and Hawley, however, this is all mere sport. It really doesn’t matter that they’re wrong on the facts, or that they’ve mischaracterized Morrison’s career. For them, this is about sowing fear and anger to position themselves for the midterms and later runs for office.

But the people Morrison freed from prison have little time for politics as sport. Time is what was taken from them. Her nomination to the federal bench is validation that their suffering mattered

— that should some wrongly convicted prisoner try to raise an innocence claim in the future, there would be at least one more voice on the federal bench willing to take them seriously. And it's infuriating to watch these senators make a mockery of it all.