

News, Police and Prosecutors

Missouri Attorney General's Office pushes to keep innocent people in prison

By **Emily Hoerner** | 7 hours ago



Photo illustration by Kat Wawrykow .Photo from the Attorney General Eric Schmitt Facebook page.

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Joseph Amrine spent nearly a third of his life in prison condemned to die before the state's case against him began to evaporate. Amrine was convicted in the murder of a fellow prisoner in a recreation room at the Jefferson City Correctional Center in 1985, and by 1998, several key witnesses recanted their statements.

In 2001, prosecutors under then Missouri Attorney General Jay Nixon pushed for an execution date anyway, arguing two years later before the state's Supreme Court that Amrine had already tried and failed proving his innocence through lower courts.

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In one exchange, Justice Laura Denvir Stith asked Assistant Attorney General Frank Jung, “Are you suggesting ... even if we find that Mr. Amrine is actually innocent, he should be executed?”

“That is correct, your honor,” Jung said.

The court disagreed, and Amrine was exonerated (<https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=2993>). But the Missouri attorney general’s office has fought to maintain convictions in potential innocence cases.

The attorney general’s office has opposed calls for relief in nearly every wrongful conviction case that came before it and has been vacated since 2000, according to an Injustice Watch review of court records and a national database of exonerations. That includes 27 cases in which the office fought to uphold convictions for prisoners who were eventually exonerated. In roughly half of those cases, the office continued arguing that the original guilty verdict should stand even after a judge vacated the conviction. (The office, however, played no role in at least 13 exonerations during that time period.)

This year alone, the convictions of three men were vacated after lengthy legal battles with Attorney General Eric Schmitt’s office.

As the primary agency tasked with handling post-conviction issues, the office wields outsize influence over most wrongful conviction cases in the state. (State law allows local courts to handle cases where belated DNA testing could change a verdict, so a smaller portion of exonerations in Missouri are handled without the attorney general.)

The office’s decades-long pattern of stymieing exonerations has left the wrongfully convicted languishing in prison for years. And its stance on exonerations has persisted as elected attorneys general have come and gone, regardless of political affiliation.

A spokesperson for the attorney general’s office declined to discuss its handling of wrongful conviction cases.

But former Justice Michael Wolff, who sat on the state Supreme Court during Amrine’s petition for habeas corpus, told Injustice Watch and The Appeal that the office operates as though its job is to keep convictions intact, “even if you might have convicted an innocent person.”

“You have to pretend that the criminal justice system is without error, and you can’t pretend that,” Wolff said.

The office is currently fighting efforts that would allow the release of Lamar Johnson, who was convicted of murder in 1995. Last year, St. Louis Circuit Attorney Kim Gardner’s review of the case uncovered evidence (<https://www.injusticewatch.org/news/2019/st-louis-prosecutor-calls-to-overturn-conviction-based-on-fabricated-police-evidence-undisclosed-witness-payments/>) that prosecutors withheld information about payments made to the sole eyewitness who has since recanted his testimony. Police fabrications by the lead detective about a motive for the killing, false testimony by the same detective, and a failure to disclose information about a jailhouse informant led to Johnson’s wrongful conviction, Gardner found. And even though Johnson has the support of Gardner, Schmitt argued (<https://www.injusticewatch.org/news/2019/nationwide-prosecutors-st-louis-judges-ruling-in-murder-case-is-a-symbol-of-unfairness/>) that local prosecutors lack the authority to vacate convictions. The chief of the attorney general’s criminal division said (<https://www.courts.mo.gov/SupremeCourtVideo/SCaudio/SC98303.mp3>) that giving local prosecutors the power “has the potential to undermine public confidence” in the criminal legal system.

Johnson’s legal team detailed the attorney general’s blanket opposition to claims by the wrongfully convicted in a court filing earlier this year. One of the lawyers, Lindsay Runnels, also clashed with the office when she represented Lawrence Callanan, who was exonerated in June (https://www.stltoday.com/news/local/crime-and-courts/missouri-supreme-court-orders-release-of-st-louis-county-man-convicted-of-murder-in-1996/article_76a57d24-5c52-538f-9c82-de0222c6e79b.html).

Runnels said the attorney general fought for years to uphold Callanan’s conviction despite a local prosecutor’s admission that he instructed an eyewitness (<https://www.law.umich.edu/special/exoneration/Pages/casedetail.aspx?caseid=5760>) not to disclose exculpatory evidence in the case, in violation of the U.S. Supreme Court decision Brady v. Maryland (<https://supreme.justia.com/cases/federal/us/373/83/>).

She said the attorney general’s office behaves as if “they’ve never seen an innocence case.”

“They think the system bats 1,000,” Runnels said.

Several lawyers interviewed by Injustice Watch and The Appeal noted that the office's handling of exoneration cases has remained static under the leadership of both Democrats (Jay Nixon and Chris Koster) and Republicans (Josh Hawley and Schmitt).

Sean O'Brien, who represented Amrine, linked the office's seemingly reflexive opposition to innocence claims with Missouri's devotion to the death penalty, favoring finality in court decisions. But that approach "blinds you to innocence," O'Brien said.

Later this year, Schmitt will face Democratic nominee Rich Finneran in an election for the attorney general seat. In an interview with Injustice Watch and The Appeal, Finneran criticized Schmitt's handling of wrongful conviction cases and said he'd do things differently if he is elected.

"It certainly seems as though Eric Schmitt at least has a reflexive instinct to defend every conviction, regardless of whether or not it was properly obtained," said Finneran, who also blasted Schmitt's reliance on procedural arguments and technicalities in Johnson's case as unethical.

Tricia Bushnell, the executive director of the Midwest Innocence Project who has worked on wrongful conviction cases in Missouri, Kansas, and other states, said the attorney general's "obstructionist" stance is disingenuous.

In the case of Johnson, whom Bushnell also represents, the



Midwest Innocence Project

Lamar Johnson

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St. Louis prosecutor: Fabricated and hidden evidence by police, prosecutor led to wrongful conviction (<https://www.injusticewatch.org/news/2019/st-louis-prosecutor-calls-to-overturn-conviction-based-on-fabricated-police-evidence-undisclosed-witness-payments/>)

attorney general argues that Johnson has to request relief through a different avenue where the attorney general instead of the local circuit attorney would represent the state.

"Except how will justice be found there when they denied justice to every one who's ever filed there?" Bushnell said.

In Ricky Kidd's case, the attorney general clashed with lawyers from the Midwest Innocence Project for seven years over the process of petitioning a court to review and overturn his conviction. By the time his lawyers got the process going, a co-defendant admitted that Kidd was not involved in the 1996 double murder that landed both men in prison on life sentences.



A rally in downtown St. Louis calling for the release of Lamar Johnson. Photo courtesy of Tish Sjuts with the Midwest Innocence Project.

“Every time I lost, it was devastating ... like a boxer taking a gut punch,” Kidd told Injustice Watch and The Appeal. “The Missouri attorney general’s office is not arguing that we’re not innocent, they’re arguing technicalities.”

Kidd was exonerated last year. But he said the ordeal took an emotional toll on him and his loved ones, especially his children, who are still struggling to make sense of what happened to their family.

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“They’re so angry underneath that they don’t know where to place that anger,” Kidd said. “The state is not an individual. My daughters don’t know how to process what has really happened to them.”

More recently, amid the COVID-19 pandemic, the attorney general’s office railed against the release of Donald “Doc” Nash. The 78-year-old Missouri man was accused of murdering his girlfriend in 1982 and convicted based in part on dubious expert testimony that has since been discredited—and may have also been fabricated.

Nash, who his attorney said suffers from heart problems, remained behind bars as COVID-19 spread through the facility where he was held. The state Supreme Court vacated the charges against him in July.

But even when the wrongfully convicted secure their release, their fight isn’t necessarily over. They must live with the fear that they could be tried again. In December, a St. Louis Post-Dispatch columnist warned (https://www.stltoday.com/news/local/columns/tony-messenger/messenger-when-does-a-prosecutor-s-responsibility-to-seek-justice-end-a-tale-of-two/article_18377c14-74d3-5036-a042-480ea82c74a3.html) two newly released exonerees who had avoided a clash with the state prosecutor, “The attorney general is coming for you.”

Brad Jennings was released from prison two years ago and exonerated in the death of his wife. Still, Jennings feared that the attorney general would keep trying to lock him up. He was right.

Prosecutors from the attorney general’s office appealed a judge’s decision to vacate his charges, arguing that it was Jennings’s responsibility to locate forensic testing evidence that the police had not disclosed at trial that would support his innocence claim. In April 2018, a panel of Missouri Court of Appeals judges wrote in a decision (https://www.courts.mo.gov/file/SD/Opinion_SD35402.pdf) that they found the state’s argument to be particularly repugnant.

“Everybody needs to know that the truth doesn’t matter to the attorney general’s office,” Jennings said. “It’s just whether or not they can get somebody convicted.”

Now that more than 40 prosecutors’ offices across the country have created units to review the integrity of past convictions, law enforcement’s reticence to address wrongful convictions is no longer the norm, said Miriam Krinsky, executive director of Fair and Just Prosecution.

Krinsky, whose group includes local elected prosecutors from across the country, told Injustice Watch and The Appeal that the Missouri attorney general’s office seems “wedded to an old way of doing business, that autopilot of defending convictions at all costs.”

That mentality can cause real harm in the public’s faith and belief in the criminal justice system, Krinsky said, especially when cases like Johnson’s draw the attention of the nation.

“When we have individuals who spent decades behind bars because someone is claiming someone is time-barred, that’s an embarrassment and that’s a stain on the entire justice system,” Krinsky said. “This is the kind of thing where the ripple effect of allowing these sorts of practices to remain in place extend beyond a single jurisdiction.”

Bob Ramsey, who has represented Missouri exonerees Mark Woodworth, Cornell McKay, and Jennings, said he’s seen the attorney general’s office use what he called “dirty tactics” since the early 1990s.

“I’ve seen them stoop to unbelievable depths to preserve a conviction, and to obtain a conviction,” Ramsey said.

Ramsey said that in Woodworth’s case, the attorney general’s office discovered a plethora of evidence that should have been disclosed by the state prosecutors to the defense before trial, then dragged the case out for years. The withheld evidence included three letters: one from the judge to an assistant attorney general who tried the case acknowledging the pair had discussed the case on several occasions; a second letter from the victim to the judge that prompted the calling of a grand jury in the case; and a third letter from the local prosecutor to the judge indicating that the surviving victim was “adamant” that they charge another suspect, as well as information that the other suspect had violated an order of protection against the victim’s daughter.

Platte County Circuit Court Judge Owens Lee Hull Jr. eventually removed the attorney general’s office from the case and appointed a special prosecutor; Woodworth was convicted for murder twice, and both convictions were later thrown out on appeal. Ramsey said he’s unaware of any professional consequences that the office or its attorneys have faced as a result of its misconduct in the Woodworth case.

The assistant attorney general who tried Woodworth at his first trial, Kenny Hulshof, went on to become a U.S. representative for Missouri’s Ninth Congressional District. He held his seat for 12 years.

In 2008, Hulshof ran for governor but lost to Nixon.

Kidd said society—not just the wrongfully convicted—pays a steep price for innocence cases. Both victims and communities are deprived of safety, while taxpayers pay for years of imprisonment and legal battles surrounding tainted convictions.

“I think that’s enough for anybody to say, ‘Wait a minute we gotta do better, we have to respond in a way that’s more thoughtful for the people who put us in office,’” Kidd said.


Jonah Newman and Annabelle Rice contributed reporting.



Emily Hoerner / Injustice Watch

St. Louis City Circuit Attorney Kimberly Gardner at a press conference August 1, 2019.

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 johnsmith@example.com

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