



GUEST COMMENTARY

# I was a federal prosecutor in the District of Kansas. I know why KCK gets no justice

BY MIKE WARNER *SPECIAL TO THE STAR*

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President Joe Biden will soon appoint 93 new United States attorneys. One such appointee will be in the District of Kansas. Should Kansans care? Moreover, what about the selection process?

A United States attorney is the chief federal law enforcement officer within his or her jurisdiction. They are appointed by and serve at the president's discretion with the senate's advice and consent.

Citizens should recognize appointments to such a powerful position. Not only are criminal and civil justice at stake, but also the stewardship of voluminous tax dollars.

Given this authority, most presume a U.S. attorney is chosen based on merit, litigation ability and federal law enforcement experience. In actuality, as the past 20 years of Kansas' appointments demonstrate, this is not the case. Selections occur by political connections, practicality and personal relationships rather than merit or expertise.

The jobs are standard rewards for loyal political service and proper connections in the reigning political party. Nearly all federal legal system positions are

nonelective positions and filled by patronage appointment. Despite advancements in civil service employment law, federal court appointments are still reminiscent of Andrew Jackson's spoils system a century ago.

As a result, many U.S. attorneys view their positions as temporary stepping-stones for future opportunities, whether in politics or the private sector. While in office, they favor good publicity, generally hire friends and supporters and place compliant, sycophantic individuals in management positions. Appearances generally trump substantive effort and the actual, daily grind of federal civil and criminal work. Career U.S. assistant attorneys learn to operate in a bifurcated political versus legal environment. In extreme cases, the patronage appointee is called an "empty suit." They are viewed as woefully unqualified, inexperienced and desperately interested in self-publicity and future advancement.

Why does this seemingly capricious selection process deserve more attention? Money and justice are at stake. Both are apparent public concerns. Recent national history has shown how political ideology has reshaped the Supreme Court and otherwise led to an unprecedented number of partisan federal court judges. Jeff Sessions and William Barr's appointments as U.S. attorney general arguably politicized the Department of Justice, reduced its autonomy and undermined the administration of justice. Politicization, either intentional or the result of ignorance and inexperience, can erode the legal system's effectiveness and waste public resources and taxpayer money. In short, whether by design or insufficient qualifications, patronage-based appointments can have harmful consequences for practical general management purposes. The result of the federal court system can be the creation and continuation of legal injustice.

Over the past two decades, the U.S. Attorney's Office in the District of Kansas has epitomized both politics and problems. A political rather than courtroom calculus seemingly chose recent appointees, all white males. None were career prosecutors, nor did any possess prior federal management or extensive criminal jury trial experience. None could lessen unfair, if not illegal conduct within the Kansas City, Kansas criminal division. The latter is the subject of ongoing court opinion and newspaper reporting.

I worked as a federal prosecutor in the District of Kansas. My background was prosecutorial, with extensive state and federal court experience. From 2010 to 2013, I was a management-level attorney or first assistant. I resigned from my position as the first assistant and left the office in 2014. I did so because of what I perceived as embedded, unfair prosecutorial practices within the office. The extent of the misconduct seemingly bewildered the appointed U.S. attorney and most undoubtedly my subordinate management attorney.

Since my departure, prosecutorial problems have worsened in the district. Prosecutors in the Kansas City, Kansas office face allegations of Sixth Amendment violations, obstruction, destruction of evidence and perjury. They stand accused of continually using their discretion in the most draconian, strident way. Renowned defense attorneys avoid representing clients given overbearing prosecutorial conduct and lack of assistance from management. Unfairness persists, and the only apparent recourse is shifting a notorious assistant to the civil division.

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Now is not the time for an empty suit appointment in the District of Kansas. The United States citizens who live in this state deserve an experienced federal prosecutor with the courage to confront problems. Sens. Jerry Moran and Roger Marshall need to review candidates and approve a qualified candidate carefully.

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