GOV. NIXON SHOULD REMOVE PROSECUTOR MCCULLOCH TOO

What a difference a day makes. After several days of police wilding in the streets of Ferguson, Missouri Governor Jay Nixon removed local and county control of policing and ordered the head of the Missouri State Patrol to take over. The change in tone was immediate, instead of making war on the citizens of Ferguson, last night the police walked side by side with the protesters and engaged them as actual citizens. Suddenly things were better and hope returned to the town.

The move pretty clearly should have been made a couple of days earlier, but Gov. Nixon was right to make it and made a strong and unifying statement when he announced the move.

But governor Nixon's work is not done. It is not just the local police that displayed impropriety and lack of fitness for the job in relation to the aftermath of the Michael Brown killing…so to has the local prosecutor, Robert McCulloch.

Late yesterday, McCullogh said this to local reporter Paul Hampel:

> #MikeMike STL County prosecutor Bob McCulloch called me. Said Nixon replacing Chief Belmar with HWP Capt Johnson was illegal, disgraceful.
>
> — paul hampel (@phampel) August 15, 2014

> #MikeMike "Nixon denigrated the men and women of the County Police Department and what they've done." —McCulloch
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> — paul hampel (@phampel) August 15, 2014

First off, McCulloch's statements displayed a

remarkably tone deaf and tin ear, not to mention an affinity for the local police that is directly at odds with the duty of prosecuting the officer who killed Michael Brown. And make no mistake, the killing is shaping up as a straight up execution of Brown by the soon to be named officer. Yet another eyewitness came forward last night (in some superb work by MSNBC and Chris Hayes) reinforcing and corroborating the description previously given by Dorian Johnson, the youth who had been with Brown.

So, the statements of prosecutor McCulloch, who as the elected prosecutor for St. Louis County, would have presumptive jurisdiction of any prosecution, already place him in a position of potential bias.

But there is more in McCulloch's background that makes him inappropriate for this case. As described in a Reuters background article on McCulloch:

> As St. Louis County prosecuting attorney, McCulloch is responsible for deciding whether to pursue criminal charges against the police officer who fatally shot 18-year-old Mike Brown on Saturday outside a low-income apartment complex in Ferguson, Missouri.
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> The shooting of the unarmed black teenager sparked days of rioting and protests in Ferguson and surrounding communities and some residents say the mostly white ranks of local and county law enforcement officials are not objectively investigating the case.
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> McCulloch, 63, has held the top county prosecutor's job for 23 years and has promised an impartial investigation of Brown's death. But protesters say McCulloch, whose police officer father was killed in the line of duty when McCulloch was a child, should be removed from the case.
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> "I don't trust Bob McCulloch," community

> activist Anthony Shahid said as he helped lead a march by roughly 100 people at the St. Louis County Justice Center this week. “His father was killed by a black man.”

Should that history disqualify a prosecutor in a normal situation? No, probably not. But this case is not at all a normal case. The eyes of the world are now on Ferguson, and the town is still distrustful of the local authorities and frayed at the emotional seams.

The investigation and charging determination have to be beyond reproach. It has to be done right and the citizens and victim’s family must trust justice is being fairly done. At this point McCulloch cannot be the man who leads that effort. Not now.

And there is a clear path for Governor Jay Nixon to remedy the situation. Chapter 27 of the Missouri Revised Statutes, specifically §27.030, provides:

> When directed by the governor, the attorney general, or one of his assistants, shall aid any prosecuting or circuit attorney in the discharge of their respective duties in the trial courts and in examinations before grand juries, and when so directed by the trial court, he may sign indictments in lieu of the prosecuting attorney.

Governor Nixon has the clear authority to order Missouri Attorney General Chris Koster to aid this prosecution and guide the grand jury investigation. In order to give the community confidence a fair process and justice is being delivered, that is exactly what the Governor should do.

[**PS Note:** While the post title talks of “removal”, and there may or may not be a separate path for that available to Nixon under “emergency powers”, §27.030 only provides a path

to have the AG, or his designee, be effectively a co-leader of the prosecution, both in the grand jury and in the trial court. This would be a substantial move, in and of itself, in that a more neutral party than McCulloch would be involved along side him, with full rights to participate in proceedings.]