

No Standing News

Since we have no standing, we stand with those left standing

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Serving the Outlaw City of Missouri Now we're the "Outlaw County of the Ozarks"

In a law enforcement war, should we take sides or take cover? If you haven't read the press release of Monday, June 7th issued by **Rolla Police Chief Pikka, St. James Police Chief Friend** and **Phelps County Sheriff Blankenship**, you've surely heard talk about it. To catch up, the full text of all the warring documents can be found on the NSN web site: **1.** a letter from Blankenship to Clayton dated May 27, 2004 where Blankenship accuses Clayton of soliciting a false probable cause statement in the Miller case. He tells Clayton that he "*should be ashamed of himself*" and, Blankenship wrote, "*If you aren't willing to work to be an effective prosecutor, if you are any kind of a man at all, you will resign and let someone else take over that will do the job that our citizens deserve.*" **2.** The joint press release from three law enforcement groups attacking Clayton. **3.** A statement by Ken Clayton rebutting the cop's press release and, **4.** An undated rebuttal (of Clayton's rebuttal) written by Captain Roy Day of the Sheriff's department to Channel 16 after Prosecutor Clayton's appearance on June 9th. We'll continue to post the full text of any further incoming and outgoing fire on the NSN web site without comment. Here, however, we have plenty of comment.

This started a few years ago when County Sheriff Don Blankenship (R) and County Prosecutor Ken Clayton (D) began taking public pot shots at each other over what Clayton said was a backdated warrant. The fight escalated when Clayton called a public meeting and announced he would have Blankenship investigated for allowing a deputy to backdate a warrant. A special prosecutor from Miller County was appointed but he concluded Clayton's allegations didn't hold up; Clayton had fired and missed.

Last September the state auditor returned *another* bad audit report on the Sheriff in the biennial county audit and *again* (the auditor had cited him for it before) the problem was recordkeeping and security of seized evidence and property. Every two years the auditor has documented Blankenship's bad management of the department (as well as Clayton's management failings) but voters, unfortunately, don't read those reports. In 2002, at the direction of the circuit court, an investigation was made into the status of about 730 cases involving seized weapons and drugs and for most of these cases the Sheriff's department could not locate the property (guns and drugs) or document that they had obtained authorization from the court or the prosecutor for disposal. This was not just a minor management problem. Blankenship blamed it on a deputy and demoted him but took no responsibility himself. End of problem as far as Blankenship was concerned. Finally, the 25th Circuit Judges were jarred out of their lethargy by the monumental volume

of the "losing" that had taken place in their jurisdiction and on their watch. They asked for an investigation by the Attorney General of the missing drugs, vehicles, cash and other evidence in the 730 cases. The Attorney General hasn't said anything – yet. Blankenship and Day deny this attack on Clayton is part of a political offensive to distract voters from these issues. Voters will draw their own conclusions about that in November.

Then a major volley was fired on Monday when **Sheriff Blankenship, Rolla Police Chief Pikka** and **St. James Police Chief Friend** issued a press release to 40+ news organizations and public officials (including the Governor and Attorney General) saying their "joint" agencies had taken "**a UNANIMOUS VOTE OF NO CONFIDENCE IN PROSECUTOR CLAYTON'S WILLINGNESS TO MEET HIS SWORN OBLIGATION TO SUPPORT LOCAL LAW ENFORCEMENT AND THE PUBLIC SAFETY ISSUES CRITICAL TO THE OVERALL HEALTH AND WELFARE OF THE RESIDENTS OF PHELPS COUNTY.**" (quadruple emphasis theirs) They attacked Prosecutor Clayton for a "volume of serious criminal cases in which *no charges* are filed" and for "ridiculous *plea bargaining* with defendants that *allows them to escape justice with a mere slap on the wrist* for offenses ranging from *child sexual molestation, serious narcotics offenses, felony thefts, assaults on law enforcement officers, and multiple drunk driving offenses.*" (emphasis theirs) Two and a half pages of detailed complaints in seven cases were laid out to convince readers that Clayton was guilty of misfeasance and nonfeasance in office if not malfeasance. Clayton's response says the details are wrong and, as you would expect from a lawyer, he makes a better case in his own defense. However, Clayton has many weaknesses in his version too. Were some of his judgment calls influenced by his attitude about the department? Is it really that comforting to us that a sexual predator will "most likely" never be released? Like kids caught brawling; it's all the other guy's fault. After Clayton's response, Captain Day did admit that they had some of their 'facts' about the Barnes sodomy case wrong, but if they got that wrong what else did they get wrong?

The cops don't like to talk about the missing drugs and guns and the prosecutor doesn't like to talk about another alleged sexual abuser who ran for public office a few years ago. Clayton tossed that political hot potato to the Maries County prosecutor who did nothing at all and he took years to do nothing. In Captain Day's four page letter rebutting Clayton's rebuttal of the accusations by the "Joint Agencies" Day, for instance, concludes that because Clayton delayed a search warrant the drugs an informant claimed were at a

location had been sold or moved. Well the drugs may have been there or maybe the informant was just wrong. The tendency to jump to self-serving conclusions is not something we like to see from either the prosecutor or law enforcement.

Support your local...which? So, having heard both subjective versions let's rush to judgment and pick a side. Should we support our local cops or support our local prosecutor? On second thought, maybe we won't pick any side because we see something wrong here beyond the tit-for-tat list of grievances about seven cases. What we see is a serious breakdown of the system, a structural failure that puts all of us at risk.

'Blue Coup' or impeachment, what's the plan? It's not clear where the "Joint Agencies" are going with this. At the end of their press release they ask for *"those who believe they have information pertinent to this issue with Prosecutor Clayton are welcome to contact their local law enforcement agency or local government representatives."* We're invited to join their war but we're not sure it's safe for unarmed civilians. If they're asking for more information on the seven cases, isn't it their job to gather information, or was that an invitation to just "support your local police" right or wrong? No thanks to both. As for the invitation to contact our local government representatives, why would we bother them when they're busy breaking laws themselves? Before you fire a Scud missile at an elected official (particularly a prosecutor) impugning his reputation and performance in office (not to mention his manhood) your facts had better be dead on accurate and you'd better have a plan ready for what comes next. We don't get what the plan is.

Don't imagine however that we're siding with Clayton. Kenneth Clayton has a history of aloofness that reads as arrogance. Election to office didn't relieve him of the obligation to communicate with the people who elected him and he isn't excused from responding to their questions and concerns. That public includes policemen who more than most need to understand what his office does and why they do it. Clayton emerges on rare occasions to get a salary increase or a tax for more staff but otherwise has nothing to say to us. His attitude, that he owes the public no explanation for how he conducts his duties, hasn't worked in his favor. Clayton has refuted the accusations but all that gives us is just another version of the train wreck.

The lawful remedy. If Blankenship, Pikka and Friend have proof that Clayton is incompetent, corrupt or whatever then their choices are limited but they must be lawful. They can file their affidavits with the court. The court will appoint another prosecutor and they can properly make their case to have him removed from office or, they can support another candidate and try to replace him. They have done neither of those things; they have only made flaming accusations and asked *us* to do what... hire a nanny? On the other hand if Clayton thinks they are incompetent or corrupt, he has the same lawful remedies, but instead of using them he instructs *us* to question the Sheriff about the mysterious missing drug hauls and missing charges from his highly publicized drug

arrests. Interrogating the sheriff about missing evidence isn't our job, it's Clayton's job and he'll have to do it.

Judging from Blankenship's letter and their Joint Agency statement the cops seem to believe that they can either make Clayton cave in and run the prosecutors office to their satisfaction – "be on their side" - or force him to resign; in other words, a coup against the prosecutor. Blankenship's "Be a man" letter to Clayton makes exactly that challenge, either do it Blankenship's way or make room for someone who will. If that's what the "Joint Agencies" have in mind then they deserve no support from the public. This is a democracy not a banana republic.

One thing that is clear from their own statements is that there is a shocking lack of understanding by law enforcement of due process, trial procedure, and their proper role in the system - that is an unhealthy state of affairs. People who are uninformed are easily manipulated and there's more than just a little of that going on here. The prosecutor makes the situation worse because he either can't or won't communicate with officers, which has allowed their real or imagined grievances to fester. The cops, however, need to get down off their high horses and quit blaming the prosecutor because every case doesn't end like a script of Law & Order.

To Protect and Serve? So where does all this leave us – the people they all claim to protect and serve? We don't feel very protected and we know damn well we're being badly served while they sulk and refuse to cooperate in the daily work of investigating and prosecuting crimes.

Because of their behavior none of the parties are credible witnesses. In fairness, we should read what everyone has to say but there won't be any blinding light of clarity. The public doesn't have access to objective facts about any of the cases and we never will. We can't judge where the truth lies, what is colored by long-term animosity between the parties and which 'facts' have a self-serving spin. So, putting aside the personal attacks and case-by-case white noise these are *our* complaints:

1. To refute Clayton's claim (unsubstantiated) that Blankenship carried around a "No Confidence" petition for a week with little success until the mandatory joint meeting, Day goes on for nearly a page explaining about the meeting of the three departments, who came and who was excused, etc. the point being to illustrate alleged threats Clayton made against some or all cops for obeying orders to attend and to prove how 'fair and impartial' the mandatory unanimous vote was. Day says this meeting was to put down a "grassroots movement that was afoot" against the prosecutor "at the street officer level" but denies he and the Sheriff had anything to do with the movement or the petition. His claim that a "mandatory" meeting of three departments produced a "spontaneous unanimous" vote of No Confidence against Clayton is unconvincing in every detail. A secret ballot...maybe, but forced attendance and a show of hands with the bosses watching is absurd. His clincher for denying that this was a vote under pressure, ("how do you go about threatening over 50 armed officers,") raises a chilling image for the public and would have been better left unsaid.

What did these “street officers” imagine they were going to do with their movement? Who encouraged or permitted gossip, bellyaching, and misunderstandings - either real or imagined - to go so far that they had to have a mandatory meeting with nearly every cop in the county and two cities to quell the rebellion? Were these “street officers” taking their cue from the attitudes and inflammatory comments of their superiors? If that’s the case the Sheriff and two Chiefs have confessed their inability to enforce discipline and maintain professional conduct in the ranks. The very least they are guilty of is poor personnel management. Problems between elected and appointed officials should be solved at their level; employees, particularly public employees, should not be dragged into management grudge fights particularly when politics cannot be ruled out as a contaminating factor.

2. They can all, officers and prosecutor alike, quit wrapping themselves in the flag. Everyone is trying to lay claim to being the only party acting in the interest of our health and safety. On the contrary, they are ALL jeopardizing our safety with childish displays of testosterone, playing games with warrants, sabotage of court processes and indulging in unprofessional language and petty behavior. Who, for instance, was minding our health and safety while nearly every officer in the county was in this grievance meeting?

3. But this is the message we’re getting that is the most disturbing. In their joint statement the three agencies say they took the so-called unanimous vote of No Confidence because, they claim Clayton is unwilling, **“TO MEET HIS SWORN OBLIGATION TO SUPPORT LOCAL LAW ENFORCEMENT”**... Chief Pikka in an interview confirmed this point of view by saying, “The consensus among the officers is (Clayton’s) not on our side.” Whoa

there! Not on “our” side? Do they really believe the prosecutor has a sworn obligation be on *their* side?

Well fellas, this may be news to you but the prosecutor doesn’t have a “sworn obligation to support *local law enforcement*.” From the Missouri Supreme Court Justices down to the village dog catcher, everyone takes the same oath, “*to support the Constitution of the United States and of this state, and to demean themselves faithfully in office.*” If you’re suffering under the delusion that the prosecutor or anyone else has a “sworn obligation to support local law enforcement” you’ve been infected by the media fad for declaring everyone in a uniform a hero and it’s time to get over it. If someone told you the prosecutor is supposed to be “on your side,” that somebody has been reading too many bumper stickers.

The reason a prosecutor shouldn’t be “the cop’s prosecutor” is because cops, prosecutors and judges at times need to be investigated arrested and punished for their crimes just like anyone else. A Wellston cop has just been indicted by a federal grand jury for soliciting a bribe in a drug case. The U.S. Attorney said his office would “aggressively pursue... officers who choose to break the law, because no one is above the law.” If the prosecutor is “on your side” then the public is in real danger. Who protects us from bad cops if he’s “your” prosecutor? Who protects us from bad prosecutors if you’re “his” cops? There’s only room for one “side” here and it’s *our* side.

As for the last part of that oath you all took - including Clayton - it doesn’t look like any of you are “demeaning yourself faithfully in office.” In our view all combatants get a vote of No Confidence and we sentence you to anger management counseling.

The Silent Culprits

The Phelps County Commissioners have offered to mediate between the prosecutor and the sheriff. Nice that they offered but it won’t work. The commissioners have no teeth to use on either of them; any frail truce between these two will have to be enforced with a gavel and real punishment – fines or jail time - for contempt of court. And speaking of the court...

There has been a resounding silence about this from the bench. The Circuit Judges should be put on the spot and asked what they plan to do about this boil on the rump of the court but they’re counting on the fact that no one will dare ask them. Well we’re asking!

Neither the Circuit Judges nor the Phelps County Bar Association has clean hands in this. Ugly at this decibel level doesn’t happen overnight and it doesn’t happen right under their highly paid noses without first showing up in their courtrooms in a hundred different ways over the years. Judges have seen plenty of evidence of the problem but except for asking for one investigation from the state to find out why Blankenship “lost” the drugs, guns and other evidence from nearly 730 drug cases and why he can’t remember where he

got \$86,000, they have done nothing about the effect these battles have had on our local system of justice – protecting that system is their responsibility.

Their cover story will be that there’s nothing they can do because they have to maintain “judicial independence” but that’s just bunk. The Circuit Judges could have and should have stopped this years ago. They have the power to make it professionally painful and personally expensive for any officer, prosecutor, lawyers or citizen who dare use the judicial process for an alley fight. Judges have the power to punish anyone - repeat anyone - for: “*disorderly, contemptuous or insolent behavior committed during its session, in its immediate view and presence, and directly tending to interrupt its proceeding or to impair the respect due to its authority,*” and for “*willful disobedience of any process or order lawfully issued or made by it*” and for, “*resistance willfully offered by any person to the lawful order or process of the court.*” According to what we have been reading all of the above apply.

Practicing attorneys have seen the same evidence of disorder, disruption, disobedience and procedural sloppiness

when representing their clients but they file no complaints with the court...why haven't they? Is it because the friction between these departments creates flawed processes that can be useful to their cases? A local bar association isn't just supposed to be a social club for lawyers; it's supposed to have a more meaningful purpose. The purpose of their organization, to paraphrase their professional code, is to maintain the integrity of the profession and promote public confidence in our legal system. (Yo, who's buying the next round?)

It is unacceptable that our circuit judges have allowed this festering feud to affect the lives of people subjected to their power; victims, perpetrators and the innocent have all been caught in the undertow, all are affected in large and small ways. **The determination of guilt or innocence must not depend upon who is scoring points in a bureaucratic guerilla war.** It raises serious legal questions about how many innocent people may be suffering the consequences of failure to produce exculpatory evidence, questionable testimony, failure to appear to testify, lack of judicious prosecution, sloppy record keeping and other products of these long-running skirmishes. That ugly question belongs squarely at the door of all judges in this circuit as well as the local lawyers club. Our public courthouse is not just a place for the privileged few to make a living; serious things happen there and people's lives and fate should be treated seriously no matter who they are or what they have done. They are all quick to preach to us we must obey the "rule of law" but the rule of law cuts both ways and the standard of conduct is more exacting for those who wear guns, badges and exercise the kind of power prosecutors, judges and lawyers have over our lives and our liberty.

All press releases and letters on the NSN web site:

[Blankenship's letter to Clayton](#)

[News release from Blankenship, Friend and Pikka](#)

[Clayton's response](#)

[Day's response to Clayton](#)

Circuit Judges and members of the bar are charged with responsibility for maintaining the highest standards in the administration of justice and in this duty they have failed us. In *better managed circuits* the first sign that a bureaucratic feud might affect that administration would be dealt with promptly and severely. **Judges Long, Wiggins, Sheffield, Haslag** and the other judges have done nothing to cool down or discipline the combatants. Have our circuit judges and members of the Bar been too preoccupied with maneuvering for advantage in the hot game of judicial musical chairs that begins when Judges Long and Wiggins retire? They'd better start paying attention to business or voters - who at times have very long memories - may decide to remove *all* the chairs.

We wait now to see if the lawyers and judges of this circuit can put aside their partisanship to restore, or force with discipline if necessary, order and civil conduct between these groups or if they're more interested in their careers than their duty. With the public admissions and accusations about things that directly affect the conduct of the court, with the cases that we've now heard about and all the ones we haven't, they can no longer pretend this isn't their business. Serious charges have been made in a very public manner; it's too late for the remedy to be applied behind closed doors leaving the public wondering what - if anything - has been done. We're entitled to know what the 'cure' will be and whether it is working.

After all, if an elected prosecutor can be run out of office, why not take out an elected judge or two that someone feels is not sufficiently "on their side"?

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