

Jane Doe vs. County of Milwaukee, et al.

13-CV-331

Transcript of the Video Deposition of:

David A. Clarke, Jr.

December 16, 2015



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MILWAUKEE 414.272.7878 • FAX: 414.272.1806 • 740 North Plankinton Ave, Suite 400, Milwaukee, WI 53203

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1 MR. WASSERMAN: Lew Wasserman for
2 Defendant Xavier Thicklen.

3 MR. LOEVY: There is another party in the
4 room. Can you identify him for the record, please.

5 MR. BOHL: I'll let him identify himself.

6 EDWARD BAILEY: Inspector Edward Bailey,
7 B-as-in-boy-a-i-l-e-y, with the Milwaukee County
8 Sheriff's Office.

9 DAVID A. CLARKE, JR., called as a Party
10 herein, having been first duly sworn on oath, was
11 examined and testified as follows:

12 EXAMINATION

13 BY MR. LOEVY:

14 Q What is your name?

15 A David A. Clarke, Jr.

16 Q And what is your current employment?

17 A I'm the sheriff of Milwaukee County.

18 Q How long have you served in that capacity?

19 A A little over 13 years.

20 Q That's an elected position; is that correct?

21 A That's correct.

22 Q When you first achieved that position, was it as a
23 result of an election or an appointment?

24 A An appointment to fill out an unexpired term.

25 Q What year was that, sir?

1 be for the actual formulation of the policies,
2 orders, and directives?

3 A Both.

4 Q Can you explain for us, please.

5 A I have an inspector who is responsible for the
6 day-to-day operations of the jail.

7 Q Is that a job title? Inspector?

8 A Yes, sir.

9 Q All right.

10 A He has the authority to implement, to make policy.
11 Captains within the jail have a lower level of
12 authority, to make policies within their area of
13 responsibility. They can't make overall, that might
14 affect some operation that they don't have authority
15 over. That would have to come from the inspector.

16 But, I give my inspectors wide latitude
17 to make policy, implement policy. Sometimes they
18 know when they should have a discussion with me about
19 it, because it may impact public policy, may be a
20 media deal, and I want to weigh in on it. But, for
21 the most part I trust the people I have in those
22 places, and let them go about doing their job.

23 Q Can the inspectors make policy that is inconsistent
24 with the policy that you have formulated?

25 A They can but then they are changing the policy, and

1 that they would probably -- better have a discussion
2 with me about.

3 Q And why had they better have a discussion with you?

4 A Because I'm responsible in the end.

5 Q And that would also be true of captains, correct?

6 A The captain would be dealing with the deputy
7 inspector in the jail or the major, which is -- The
8 top ranking person in the confinement facility is the
9 major. They would have to discuss that with him.

10 Q Since you've been sheriff, would it be fair to say
11 that there are written policies and directives?

12 A Yes.

13 Q What determines whether a given policy or directive
14 becomes written or is just transmitted orally?

15 A If it is just transmitted, it is not a policy; that's
16 a directive.

17 Q Okay.

18 A The policy has to be written so people understand it,
19 that you can point to it. Policies are guidelines in
20 case they have questions about how we want things
21 done. There are certain aspects of their operations
22 that we want done a certain way, and we make that
23 very clear. But, there are things that they can
24 do -- they meaning the officers that work at the
25 jail -- under the supervision, but there's no real

1 happens with every one.

2 Q How many times in the calendar year that Thicklen's
3 case went to the District Attorney's office were
4 there other sheriff employees who had similar --
5 Strike that, please.

6 How many other sheriff's employees in the
7 year before charges -- criminal charges were sent to
8 the District Attorney's office, how many other
9 sheriff's employees went through a similar process?

10 A I don't know.

11 Q 20?

12 A I don't know.

13 Q 30?

14 A I don't know.

15 Q 100?

16 A I don't know.

17 Q It could have been 100 other of your employees who
18 had criminal charges sent to the District Attorney's
19 office during the same year as Thicklen?

20 A I don't know.

21 Q Okay. Could it have been as many as 200 such
22 employees?

23 A I don't know.

24 Q Okay. But it could have been 200; you don't know one
25 way or the other?

1 A I don't know.

2 Q You don't know if it was more than 200 or less than
3 200?

4 MR. BOHL: Object to the form of the
5 question as argumentative.

6 BY MR. LOEVY:

7 Q You don't know if it was more or less than 200
8 people?

9 A I don't know.

10 Q Would it be fair to say that you would be concerned
11 if 200 of your employees had criminal charges sent to
12 the District Attorney's office?

13 MR. BOHL: Object to the form of the
14 question. It is a hypothetical question that doesn't
15 give the sheriff enough facts to meaningfully address
16 the hypothetical.

17 MR. LOEVY: You can answer.

18 A Well, it would wipe out a good portion of my force.

19 BY MR. LOEVY:

20 Q I'm sorry?

21 A It would wipe out a good portion of my force; of
22 course it would be problematic.

23 Q Okay. But would that be the only reason it would be
24 problematic?

25 MR. BOHL: Same objection.

1 Q What was the nature of the inappropriate contact?

2 A I don't recall.

3 Q Did you ever know what the inappropriate contact was,
4 and you just can't remember now?

5 A Yes.

6 Q Or you can't remember if you ever knew?

7 A I don't know -- I don't recall what it is today.

8 Q You knew at one time, correct?

9 A Sure.

10 MR. BOHL: Objection. Argumentative.

11 BY MR. LOEVY:

12 Q I'm just trying to find out, I mean.

13 A Sure.

14 Q You knew at one time, right?

15 A Sure.

16 Q Okay. You just can't -- And that's because one of
17 your inspectors told you, correct?

18 A Yes.

19 Q Okay. How many times did you learn that
20 Officer Thicklen was accused of inappropriate
21 contact?

22 A I don't know.

23 Q Can't remember?

24 A I don't know that I ever knew.

25 Q You didn't ask how many times he had -- You didn't

1 ask -- Am I correct in saying you don't recall asking
2 your inspector how many times Thicklen had engaged in
3 inappropriate sexual conduct?

4 A Not necessarily do I recall. I don't know why I
5 would ask. I might have, I might not have.

6 Q Wouldn't it -- In your position as sheriff with your
7 responsibility, as you put it, to the inmates,
8 wouldn't it have mattered to you whether it happened
9 once or 10 times?

10 A Nope.

11 Q Why not?

12 A Because once is too many.

13 Q I understand.

14 A And I knew it was once at least. I don't need to
15 know if it is 5, 6, 7, 8, 9. I may have asked, but
16 once would have been enough for me.

17 Q But if it happened 10 times, would it maybe have
18 indicated to you that there was some failure of your
19 policies? That if someone would do it multiple
20 times --

21 A No, there is rarely -- I was going to say never, but
22 I try not to use that word. Rarely is it a failure
23 of policy; it is a failure of adherence by the
24 employee to the policy. Don't blame the policy,
25 please.

1 Q Well, was there any policy with respect to a male
2 correctional officer being in an enclosed space for a
3 period of time with a female inmate?

4 A Enclosed space?

5 Q Enclosed space.

6 A We -- We try to guard against that, but that's not
7 always possible; but, it depends on what the
8 situation is, where maybe we wouldn't allow that
9 situation.

10 Q Why do you try to guard against it?

11 A It keeps these kinds of allegations or these kind
12 of -- allegations from being made and these things
13 from taking place.

14 Q And what, if anything, then did you adopt as sheriff
15 to prevent that from happening?

16 A If it is a female, there should be another female
17 along. Sometimes it is not possible because of the
18 staffing, you don't have it, and there's not much you
19 can do; but, then you have to rely on in those
20 situations the integrity of the people that we have.
21 And when people go outside of that, that's not a
22 failure of the policy; it is a failure of the
23 individual.

24 Q What is the policy -- Strike that, please.

25 What was the policy on or around April of

1 2013 with respect to what the duties of a
2 correctional officer were in taking an inmate to the
3 infirmary?

4 A You take the inmate to the infirmary. I don't know
5 what you mean by what's the policy.

6 Q Well, could they stop along the way if the -- if the
7 medical facility was busy?

8 A I think it is a good example of how you can't put
9 everything into the policy. You don't put stuff that
10 you can't stop along the way and you must put your
11 left foot in front of your right foot first. You
12 know, you take the person directly there. We
13 transport people within the facility and you take
14 them there. We don't put in don't stop, don't
15 pick up -- if you drop your key, don't pick it up.

16 That's not what policies are for. They
17 are guidelines. Get the person to the infirmary,
18 bring them back.

19 Q Okay. So it would be fair to say, am I correct, that
20 one of the duties of a correctional officer would be
21 to escort or take an inmate to the medical facility?
22 Is that correct?

23 A That's correct.

24 Q That's part of their job?

25 A Yes.

1 A He does.

2 Q So if he tells you I'm going to work two hours a
3 week, okay with you?

4 A I don't know.

5 Q Okay.

6 A He is responsible for the medical stuff.

7 Q And you are not?

8 A He is not there 24/7 but he is still responsible.

9 Like me, I'm not there 24/7 but I'm still responsible
10 24/7. So if there's a medical issue that comes up
11 that got screwed up, he's got some explaining to do.

12 Q Who does he explain it to?

13 A Inspector Schmidt.

14 Q And Inspector Schmidt reports to you. All right.

15 Now, someone -- One of the
16 responsibilities, am I correct in saying, of a
17 correctional officer is to take prisoners --
18 inmates -- excuse me -- to either the clinic or the
19 infirmary; is that correct?

20 A Yes.

21 Q And how does the correctional officer learn that this
22 is part of his responsibility and/or obligation?

23 A He is given -- or she is given directive. The
24 prisoner has to be taken from there over to here to
25 go do this, and go do it.

1 Q But there are occasions when that transpires,
2 correct?

3 A Sure.

4 Q And, you know, just sometimes it is useful, sometimes
5 it is not. Correct?

6 A Right.

7 Q And if an inmate is ill, either in a cell or outside
8 of a cell, would one of the responsibilities of a
9 correctional officer be to inquire about their
10 illness?

11 MR. BOHL: Object to the form of the
12 question as being a hypothetical.

13 A Yes.

14 BY MR. LOEVY:

15 Q And why would that be part of good jail practice?

16 A Well, it is not a matter of good practice. If an
17 inmate says I'm not feeling well, you would say,
18 Well, what's wrong?

19 It is my knee hurts, it is...

20 So when you call medical, you could say
21 you have an inmate complaining of a sore knee. So
22 that when the medical responds, they know they will
23 be dealing with a sore knee and not with chest pains.

24 Q Sure.

25 A That they might want to come with some sort of

1 But if a CO -- If a corrections officer
2 were to do that, I don't know why they would. You
3 asked me what reason. I don't know. I would have to
4 ask them, why did you move them from here to there.

5 Q Could they have as a reason, for example, to make
6 inquiry as to where contraband was?

7 A Say that again, please.

8 Q Could they, for example, do it for the purpose of
9 making inquiry, asking where contraband was?

10 A They could, yes.

11 Q Could they do it for the purpose of asking if they
12 had some complaints about another correctional
13 officer?

14 A I don't know why you need to move the inmate for
15 that, but maybe.

16 Q Well, so it wouldn't be -- so other people wouldn't
17 hear.

18 A Could be, yes.

19 Q Are the -- At any time since you've been sheriff, are
20 the correctional officers allowed to use tasers?

21 A Yes.

22 Q Inside the jail?

23 A Yes.

24 Q Is it a part of their normal or every-day -- Well,
25 strike that, please.

1 Is it part of their normal or every-day
2 practice to carry tasers?

3 A Yes.

4 Q And are the tasers issued to them at the beginning of
5 a shift?

6 A I don't recall.

7 Q They are not allowed to take the tasers home?

8 A I don't recall.

9 Q Is there a record kept at the jail of every taser
10 usage?

11 A Yes.

12 Q And so if a taser is discharged, there's a record as
13 to how long the usage was for, correct?

14 A Yes.

15 Q Okay. Who is in charge of that?

16 A The supervisor on the shift at the time.

17 Q Is there any restriction among either the
18 correctional officers or when there are sheriff's
19 deputies in the jail -- any restriction on who could
20 or who could not carry a taser? A taser gun.

21 A No. What do you mean, restriction? I'm sorry.

22 Q Well, Mr. -- Officer A, you can have a taser. B and
23 C, you haven't worked here long enough, you can't
24 have a taser. That kind of thing?

25 A No, there is no restriction on that. Not to my

1 knowledge.

2 Q Your expectation is that every correctional officer
3 would carry a taser?

4 A For the most part, yes.

5 Q Do you know of any exceptions?

6 A No.

7 Q As to when they would not be allowed to carry a
8 taser?

9 A It is not a matter of not being allowed. It is a
10 defensive weapon.

11 Q Sure.

12 A And, everybody working in there should be able to
13 defend themselves. It may rise to that level. So I
14 wouldn't say -- It isn't my rule or my directive that
15 certain people not carry them.

16 Q Okay. Are they required to carry tasers? The
17 correctional officer.

18 A Yes. It is part of their equipment.

19 Q Yeah. Has that been the case since you've been the
20 sheriff?

21 A No.

22 Q When did that policy or rule go into effect?

23 A I don't recall. It was after -- I'm the one that...

24 Q Instituted it?

25 A Yes, sir.

1 Q Tell me why you wouldn't ask if the detectives who
2 investigated a case of sexual assault -- why you
3 wouldn't want to know whether they thought it was
4 true, that it actually happened.

5 A I'm going to say this again. I don't care what
6 people think. I want to care -- I care what people
7 know. What do we have evidence to prove, not what do
8 you think.

9 Q Okay. Did you ask them what the evidence was?

10 A I asked them if they had evidence.

11 Q And did you ask them what that evidence was?

12 A I might have.

13 Q Might not have too?

14 A Might not have.

15 Q Because you didn't care enough?

16 A No. No, it is not that I didn't care. It was going
17 over to the District Attorney; that's the person
18 that's going to make the decision.

19 Q That's the criminal case.

20 A Right.

21 Q Could he have not done -- engaged in some sexual
22 misconduct that was not criminal but still would
23 result in his discharge?

24 A He was charged, I believe, with misconduct in office.

25 Q All right. You never charged him with sexual

1 misconduct, though, did you? You didn't.

2 A I don't charge anybody.

3 Q You could have had him fired right on the spot,
4 couldn't you?

5 A No, I could not.

6 Q You could have asked that he be fired? You described
7 the process to us earlier.

8 A Through the employee discipline?

9 Q When -- You could have asked the detectives, am I
10 correct in saying, did he engage in conduct that you
11 have evidence of that could result in his discharge?

12 A No, I could not have asked that.

13 Q Why not?

14 A Because I don't talk to the detectives.

15 Q You could have asked your inspector who had talked to
16 the detectives, do they have evidence of misconduct
17 that could have resulted -- that could result in his
18 discharge?

19 A No, I wouldn't ask that question.

20 Q Why not?

21 A We weren't at that stage.

22 Q What do you have to do other than have your
23 detectives investigate misconduct, sexual misconduct,
24 that could result in discharge? What else needed to
25 be done?

1 But he doesn't show me reports, and I
2 don't ask for reports, because I have delegated that
3 function to him and therefore I need to give him the
4 authority to make those decisions; but, I'm still
5 responsible for the decisions and -- regardless, so
6 he knows which ones he should come to me about.

7 Q And my question is a little different, though. Do
8 you receive any reports that indicated in the year
9 2015 we've had six sustained, nine non-sustained?
10 Anything like that?

11 A Nothing.

12 Q Any reports on there have been 10 accusations or
13 20 accusations, so you could compare one year to the
14 other even if they are not sustained?

15 A No, we don't.

16 Q Any reports on whether the same officer has received
17 multiple complaints, even if they are not sustained?

18 A That would come up under our, um -- What do we call
19 it? There is a system that we have. I think it is
20 an actual software system, that we are red flagged if
21 certain employees -- things are coming up. That will
22 alert. What is it called? Some sort of early
23 warning system or something. We have that in place.

24 Q And is that something that you are made aware of?

25 A No. That would be Inspector Schmidt.