



David A. Clarke Jr.
Sheriff

County of Milwaukee
Office of the Sheriff



Constitutional Sheriffs and Peace Officers Association

February 6, 2015

United States Senate
Committee on the Judiciary
C/O The Honorable Charles E. Grassley, Iowa, Chairman

Chairman Grassley, and esteemed members of the Committee,

Thank you, sincerely, for your referred questions, received February 5, entitled, *Subject: 1-28/29-15 Attorney General Nomination - Questions for the Record (Clarke)*.

Please accept my answers as provided below.

- 1. What has your experience been, as a local police officer, working with the local U.S. Attorney's Office in prosecuting criminal cases? Which federal law enforcement agencies does the Milwaukee County Sheriff's Office work with? Does your office participate in any task forces with federal law enforcement?*

I have consistently found that US Attorneys empowered to run the Eastern District of Wisconsin have been highly qualified, doggedly committed to justice for crime victims and the pursuit of the criminals, and voicing of a desire to cooperate with state and local law enforcement in their District to achieve these goals. Unfortunately, I have often noted that their thresholds to instigate Federal prosecutions are higher than I have thought wise. I believe that we have reached a point in our many of our urban centers, and specifically in Milwaukee, that most any multiple prior-convicted felon who uses a firearm in the commission of a crime of violence ought be referred for federal prosecution based on the much higher conviction and resultant custodial rates that the federal system not only offers but achieves. I believe that the creative use of the Hobbs Act, specifically as it relates to armed robbery crews, should be the federal norm until this violent urban crime is better in hand. Especially as it relates to what are clearly career criminals. My office currently participates in the Milwaukee ATF Task Force, the FBI Joint Terrorism Task Force and Milwaukee's Violent Crime Task Force efforts, the US Marshal's Service Fugitive

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Task Force, and the SE Wisconsin HIDTA. We also routinely work, in ad hoc fashion, with the US Postal Inspection Service, US Secret Service, Transportation Security Administration (at the General Mitchell International Airport, which my office polices) and Immigrations and Customs Enforcement.

2. *What types of offenders are referred to the federal system for prosecution and for what types of crimes? Are these the types of crimes that are the most problematic in the Milwaukee County communities? Do the majority of cases going through the federal system involve offenders previously arrested or prosecuted in the state? What crimes do the repeat offenders mostly commit?*

In Milwaukee County, a “gentlemen’s agreement” exists between the locally elected District Attorney and the US Attorney for the Eastern District that arrests conducted by state and local officials be presented to the DA’s office, initially, for the consideration of criminal charges and that coordination between the two offices will occur to achieve referral to the appropriate pathway in the interest of justice and, presumably, the pursuit of maximal penalties. Whereas I would prefer to see the majority of armed robbery and gunfire cases (particularly with prior convicted felons involved) handled as federal prosecutions, I generally see more Racketeer Influenced and Corrupt Organizations (RICO) and Continuing Criminal Enterprise (CCE) prosecutions exclusively. I would prefer to see more opportunistic use of Armed Career Criminal and Hobbs Act prosecutions. Our issues of home invasion burglaries, armed robbery crews, and shootings are the greatest threat to daily life in our city. Over the past twenty years the rise of the spiraling, worsening repeat offender, what I often term publicly the “armed career criminal,” is the result of a soft-on-crime therapeutic model of justice and reflects a lack of will in the local judiciary to punish effectively. These issues are largely mooted in the federal system, making that a more attractive alternative for meaningful prosecutions.

3. *Does it make a difference when these offenders are prosecuted in the federal rather than the state system? Please explain.*

Simply put: In the federal system, more positive outcomes are achieved. More guilty pleas (or findings of guilt in the rare instances of trial) result and greater custodial time is levied. But one example: In looking at Straw Purchaser investigations in Milwaukee occurring in a more than decade-long period between 2001 and 2012, my office noted a meager 46% conviction rate at the state level...with 34% of issued cases reduced, amended, plead down or dismissed entirely in exchange for a negotiated, watered down resolution, often to a separate charge. For the similar Federal statute, with a similar penalty exposure as the state charge, compare the results:

Conviction %: Federal 85% (State 46%) / % Convicted Receiving a Sentence to Prison: Federal 85% (State 20%) / Average Custodial Time Levied: Federal 47 months (State 7.5 months).

4. *You testified that criminals were afraid of the federal system. For example, you testified that to convicted felons, it means nothing to be prosecuted at the state level. Why is this the case? How is the federal system different?*

I believe that, at least in the foreseeable short term, if we are keen to see real reductions to the bloodshed in the streets, all gun crimes involving prior convicted felons should, as statutes allow, be prosecuted federally...like local communities did in the past under gun violence programs like Project Trigger-Lock and Ceasefire. Federal convictions bring higher conviction rates, and longer and more certain prison sentences. Having seen how even hardened criminals react when they learn that a federal indictment has been handed down, my 37 years have shown me that the street criminals terrorizing our city fear the federal system of prosecution, not state court prosecutions. They count on getting a third, fourth and fifth "second chance" in a state court.

5. *Based on your experience, have federal mandatory minimum sentences helped in the communities you've worked in? If so, how?*

Federal Mandatory minimum sentences have struck terror into the hearts of career criminals...and have provided longer periods of respite for the impoverished and crime riddled communities that can least afford their return. These are, generally, not the strongest communities that might have structures in place to absorb such a negative impact. But they are communities filled, overwhelmingly, with hard-working people, often minorities, struggling against issues of poverty and violence but committed to a better life. The stringent use of the Armed Career Criminal Act, in which persons convicted for illegal gun possession with three prior convictions for serious drug offenses or violent felonies receive a sentence of 15 years as a mandatory minimum, is a game changer. Additionally, federal minimum sentences address the oft-called "revolving door" recidivist nature of the state level criminal justice system. Longer periods of certain incarceration allow scant (and expensive) law enforcement resources to turn their attention to other pressing needs...and may reverse the overwhelmed calls for service queue in American policing that had led to a disturbing rise in police response times.

6. *Why would altering federal sentences, including mandatory minimum sentences for drug offenses, be short-sighted? Do you think that lowering or dispensing with federal mandatory minimum sentences would hurt crime victims?*

I rail against the leniency of a numb judiciary that fails to apply the weight of our great society's collective resolve until the criminal action becomes so horrific in its ultimate act that even the meek finally take notice. Quite bluntly, I am convinced that too many County Circuit Court judges have not shown themselves to be trusted to sentence persons illegally in possession of a gun, even when having displayed a pattern of increasing violence, to substantial prison terms. There is, instead, a disturbing pattern of light sentencing that demonstrates a tendency to stay in the shallow end of the pool. The current condition, in the state justice system, of an over-reliance on what is often (and erroneously) referred to as "second chance" programs, and a soft-on-crime therapeutic model, returns many repeat and violent felons back into high crime neighborhoods after a short stay in my county jail or state lockup, only to obtain another firearm. This broken model has no deterrent effect on changing behavior, or sending a message to illegal gun-toters, as to what will certainly happen to them if they violate our gun laws involving violence. Those who have been arrested for felony violations, five, six, seven or more times, are well beyond a "second" chance. They need to have severe consequences applied to their antisocial behavior. We cannot afford to allow complete sentencing discretion for subsequent gun violations to reside within a judiciary who I fear have bought in to social engineering experiments at the expense of our urban residents. The result, a soft-on-gun-crime model, is putting police officers, minority communities and all law-abiding citizens at risk. And so, with what I have seen over the least 37 years at the state level, I fear that altering federal mandatory minimum sentences for drug offenses, when coupled with weapons or prior crimes of violence, would indeed be short-sighted and that dispensing with federal mandatory minimum sentences would lead the federal judiciary to the place that I have seen it lead the local judiciary.

7. What were the circumstances of the death of 10 year old Sierre Buyton? How many prior arrests and convictions did the offenders who shot and killed her have?

This past summer, on May 21, 19-year-old Sylvester Akeem Lewis rode by the Clarke Street Elementary School's playground on a bicycle that he had stolen moments before. When confronted by another area resident about other area crimes in which Lewis was purportedly involved, Lewis did what too many do: produced a handgun and responded to conflict with violence. Milwaukee Police found 16 empty shell casings near the scene, and 10-year-old Sierra Guyton lay dying on the playground. In the words of the prosecuting attorney at trial, she "held on to life" after the May shooting and died on July 13, after being taken off of a ventilator. After trial, Sylvester Akeem Lewis was found guilty this past November of First-degree Reckless Homicide; First-degree Recklessly Endangering the Safety of Another; and being a Felon in Possession of a Firearm. He was sentenced to 44 years in prison, the prosecutions recommended

term, with 17 years of extended supervision when released. Sylvester Akeem Lewis had 11 juvenile arrests before "graduating" to the adult system, and a prior adult arrest for Felony Burglary or a Building or Dwelling, Misdemeanor Resisting or Obstructing an Officer, and Misdemeanor Escape. For those adult crimes, even with a lengthy and atrocious juvenile record, he received only 12 months in the Milwaukee County lockup...with even that time stayed in favor of 3 years' probation. The probation he was serving, in the community, the morning he killed Sierra Guyton.

In closing, testifying before the committee at the *Attorney Generals Nomination Hearing* this past January was a highlight of my governmental life, now stretching into its 38th year. I am certain it would be for any American law enforcement officer, and I am honored that I was selected to represent a profession that has been my proudest life's work.

Sincerely,

A handwritten signature in blue ink that reads "David A. Clarke Jr." The signature is written in a cursive, flowing style.

David A. Clarke, Jr.
Sheriff, Milwaukee County, Wisconsin