

First order of business: uphold federal gun laws

by Marna Anderson

I received shocking and sad news recently that a childhood friend of mine took her life. She had suffered from bi-polar disorder and addiction and purchased a gun one week prior to the suicide. The next day, the Tucson shooting ended six lives.

According to the Coalition to Stop Gun Violence, every day more than 80 Americans die from firearms. Our children are 16 times more likely to be murdered with a gun, 11 times more likely to commit suicide with a gun, and 9 times more likely to die from a gun accident than children in 25 other industrialized countries combined (Centers for Disease Control).

Still, even in light of these alarming statistics, Americans are reluctant to put into place greater gun safety and control laws. In the aftermath of the Tucson shooting, the debate over gun control and the 2nd amendment is being heatedly discussed as we work to figure out how the shooting could have been avoided. And to add fuel to the debate here in Minnesota, Republicans have proposed and are making headway with repealing the state's system of gun background checks and permits because they believe it to be duplicative of federal laws.

But should we rely on federal statutes when it comes to guns?

A 2003 report from Americans for Gun Safety reveals that 20 of the 22 national gun laws are not enforced. According to U.S. Department of Justice data, only

2 percent of federal gun crimes were actually prosecuted, and 85 percent of those cases were crimes of possession. That means the people illegally selling or transporting guns are almost never being charged under the firearms statutes. And that includes those selling without impediment at gun shows.

Like all laws, enforcement requires action by the justice system. And even though the U.S. Attorney's Office is responsible for prosecuting federal crimes, state officials should not turn a blind eye towards them. However, when it comes to guns, frequently they do. One of the reasons is that many state laws are less restrictive than federal statutes. This is the case in Minnesota, particularly as it pertains to firearm statutes designed to keep guns out of the hands of domestic abusers.

Federal law prohibits people who are subjects of an order for protection (OFP) stemming from an intimate partner relationship from possessing firearms. In 2004, ten years after that restriction was passed as part of the Violence Against Women Act, WATCH conducted a monitoring project of OFP proceedings in family court. The study found that it was very uncommon for judges to explain in the courtroom that the federal statute would be in effect. Although that has improved, it is rare that a judge will go further and provide information to the respondent about what he is legally obligated to do to be in compliance

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What's new

Staff

We extend our best wishes to Nashad Muse, who left WATCH in December to return to school full-time. After several months as a court monitoring intern, Nashad was hired in 2007 to provide administrative and program support to WATCH's staff and board.

Nashad's outgoing personality and infectious energy brightened the office every day and we miss her savvy insights as well as her laughter.

Like most non-profits, WATCH has tightened its belt in these lean times, so Nashad's position has not been filled. (And yes, call us if you want to rectify that situation!)

Board

In January, WATCH bid farewell to three board members: Liliana Espondaburu, Jacquelyn Hauser, and Sarah Perron.

Liliana served two terms on the board, the most recent as its chair, in addition to serving on the executive, governance, and strategic planning committees. Liliana is an advocate for battered

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Case Summaries

DAVID NMN HERNANDEZ-BUSTAMANTE

David Hernandez-Bustamante, 22, was charged with two counts of first-degree criminal sexual conduct and one count of second-degree criminal sexual conduct for abusing his father's girlfriend's daughter over a period of three years. A teacher reported the suspected child sexual abuse to Minneapolis police, and the victim, age 10, was interviewed and described Hernandez-Bustamante's ongoing abuse, which included sexual penetration. She stated that Hernandez-Bustamante had threatened to kill her if she refused to comply with his demands or if she told anyone about the abuse.

Hernandez-Bustamante pleaded guilty to one count of first-degree criminal sexual conduct, and the other two charges were dismissed. Judge Regina Chu sentenced him to 96 months in prison with credit for 230 days served. After his release, he will be placed on parole with the following conditions: no contact with the victim and her family; do not ship, transport, process, or receive firearms or ammunition; supply a DNA sample; pay restitution; and register as a predatory offender. The prosecutor was Juanita Freeman, and the defense attorney was John Ryan.

DONALD ANTHONY MILLER

Donald Anthony Miller, 35, was charged with gross misdemeanor domestic assault and misdemeanor disorderly conduct for punching the victim in the head in front of their children. His history of domestic violence includes a 2003 conviction for terroristic threats.

Miller pleaded guilty to disorderly conduct, and the domestic assault charge was dismissed. Judge Tanya Bransford sentenced him to 15 days in jail stayed for one year. He was placed on supervised probation under the condition he remain law-abiding and commit no same or similar crimes.

The prosecutor was Peter MacMillan, and the defense attorney was Melissa Fraser.

BILLY NMN NASH

Billy Nash, 47, was charged with two counts of first-degree murder and one count of second-degree murder for killing his wife, Pauline Nash. Two of their daughters told police they heard their mother scream for help and saw Nash hitting and stabbing her. One of the children called 911, and the other was eventually able to get the knife away from Nash. The victim was transported to the hospital, but died from her injuries. Nash told police during questioning that he was angry about how his wife was spending money and admitted to stabbing her with paring and butcher knives. Officers noted that Nash was on conditional release for a previous domestic assault against his wife and had an active no contact order against him at the time of the murder. An autopsy later

revealed the victim died from over 70 separate stab wounds.

Nash pleaded guilty to second-degree murder. At his sentencing hearing, two of his daughters and mother-in-law gave victim impact statements. The girls talked about the devastation of losing their mother and how they feel they have also lost their dad. The victim's mother expressed anger at the justice system for letting Nash out of jail a week before he killed her daughter. Judge Patricia Karasov sentenced Nash to 480 months in prison, an upward departure from the sentencing guidelines because he committed the murder in front of his children and the number of stab wounds demonstrated extreme cruelty. He was given credit for 242 days already served and ordered to pay restitution and provide a DNA sample. Stuart Shapiro was the prosecutor, and Elizabeth Hogan was the defense attorney.

What's New

Continued from page 1

women and a national trainer with more than 20 years' experience. We will greatly miss the wealth of knowledge and the personal warmth she brought to the board.

Jacq Hauser was the first executive director of WATCH from 1992 to 1999, giving substance and form to a good idea during its critical fledgling years. In 2004, while serving as the founding director of the Academy on Violence and Abuse—a non-profit organization of health care professionals working to gain recognition and understanding of violence and abuse as health care issues—she returned to WATCH as a member of the board. She brought with her a wealth of experience and knowledge, and behind her measured façade, a terrific sense of humor. In addition to serving on the strategic planning committee and advising the board on media and program strategies, Jacq's steady hand as both founding director and board member has helped make WATCH the credible organization it is today. We are grateful for her innumerable contributions to WATCH and will miss her guidance greatly.

Sarah Perron served one three-year term on the board, and had recently become the vice-chair, slated to be the board chair at the end of Liliana's term. Due to a new job, a beautiful two-year old daughter at home, and helping care for her grandmother, Sarah felt that she couldn't take on any more responsibilities at this time. During her term on the board she lent her considerable marketing and business experience to WATCH and provided invaluable leadership during a period of shrinking budgets and growing needs.

Thanks to all of these wise women for sharing their time and expertise with WATCH.

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with the firearms prohibition if he does own guns. Defendants convicted of misdemeanor domestic violence are also prohibited from possessing guns under both state and federal law, but this is seldom mentioned in Hennepin County's Domestic Violence Court, leaving victims unaware of this protection and defendants of their legal obligation.

The reason for this reluctance to enforce firearms statutes in these courts is rooted in a practical problem. No one has resolved where the guns should be stored during the time of the restriction or who should take responsibility for them. WATCH and many advocacy agencies, prosecutors, and judges have discussed this repeatedly, exploring various options for gun storage and identifying the obstacles to getting uniformity in how the statutes are enforced by the justice system. An idea for a pilot project in domestic violence court in recent years was shelved over public defenders' concerns that questioning defendants in court about gun ownership would violate their constitutional rights. If the defendant admitted in court to owning guns, he could be implicating himself and faced with having to illegally transport the guns in order to be in compliance with the statute.

So, even though in 2009, 50 percent of the domestic homicides in Minnesota were caused by gunshots, and in spite of the fact that the federal statute regarding prohibitions for domestic abusers with OFPs has been in place since 1994 and for convicted domestic abusers since 1996, Hennepin County still lacks a clear protocol on enforcement.

The good news is that many people working in Hennepin County law enforcement, the County Attorney's Office, District Court, and community agencies believe enforcement is critical in stemming domestic violence, suicide, and other violent crimes. We just need to work together to hammer out the protocols that will make enforcement a reality while ensuring defendant rights.

The Tucson shooting should spark much more than heated debate about whether or not existing state laws are duplicative of federal laws. It should ignite community leaders, law enforcement, and yes, the legislature, to develop a realistic plan that will result in fewer guns in the hands of those who want to hurt themselves or others.

ARTICLE RECEIVES HONORS

We are pleased to share the news that Mary Lay Schuster and Amy Proppen received the 2010 John R. Hayes Award for "Excellence in Writing Research" for their article "Understanding Genre through the Lens of Advocacy: The Rhetorical Work of the Victim Impact Statement" published in the journal *Written Communication*. Schuster was a research partner on WATCH's 2007 study of the effects of victim impact statements on sentencing.

Behind the scenes or in the news, we need your support

by Susan Lenfestey

I confess that when I read a newspaper article about the courts, whether it's a protocol to improve misdemeanor domestic assault investigations or a law making domestic strangulation a felony-level crime, I scan the page hoping for a mention of WATCH, like an anxious parent eager to see if my child's small part in the school play was noticed.

Of course most of the time there's nary a word about WATCH (except lately, and that's a different story) and I have to be content in knowing that there are circumstances behind every story that will only be known to a few people.

This isn't to say that WATCH is behind the scenes in every news item about the courts any more than my child is behind the scenes in every school play. But by maintaining a daily presence in the Hennepin County courts, conducting targeted research projects, and presenting well-documented reports and recommendations, WATCH provides data and case studies crucial to moving important initiatives forward.

WATCH is the only group to appear in court for virtually every case involving violence against women and children, not as a party to the case, but as observers of the system as a whole.

And by working within the system and serving on committees such as the Family Violence Coordinating Council, WATCH is a behind-the-scenes force for promoting legislation when needed, and for developing better strategies for handling cases of domestic violence, sexual assault, and child abuse. To promote judicial accountability on a broader scale, WATCH plays a leadership role in the Coalition for Impartial Justice, a statewide group dedicated to keeping partisan politics and moneyed interests out of Minnesota's judicial elections. In these and other ways, court monitoring promotes democracy and the integrity of the courts, as well as fair treatment of both defendants and victims.

Whether behind the story or in the headlines, WATCH does gold standard work on a tin can budget. And we need your support to continue. If you have already made a gift to WATCH this year, many thanks. If you find yourself with your checkbook in hand and can make another gift, even more thanks. And if you've forgotten to make your annual gift to WATCH, it is not too late.

You can contribute on line at www.watchmn.org, or send a check to WATCH at 608 2nd Ave. S. Suite 465, Minneapolis, MN 55402. Thank you.

2010 WATCH supporters

We extend our heartfelt gratitude to the following individuals who made generous financial contributions to WATCH last year. Individual donations make up more than half of our annual budget—we could not do this work without the support of hundreds of community members. We work hard to keep costs as low as possible and to make the most of each dollar we receive. THANKS to each and every one of you for your support.

If we have made an error or omission in your listing, please contact the office at 612-341-2747, and accept our sincere apologies.

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*WATCH notes with sadness the passing of
Gary Joselyn and Tom Miller last year.

WATCH WEBINARS

Learn about the world of court monitoring by registering for a one-hour WATCH webinar on a wide variety of topics, including:

- *Starting a court monitoring program*
- *Managing court monitor volunteers*
- *Providing feedback to your courts*
- *Writing defendant chronologies*

Specific training is also available on monitoring sexual assault cases, family courts, and order for protection hearings. Visit our website, www.watchmn.org/training, or contact us at 612-341-2747 or ddougherty@watchmn.org for more information or to schedule a webinar.

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WATCH is grateful for receiving the following grants in support of our work last year.

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Thanks also to Thompson Aderinkomi and his band The Young Professionals for donating proceeds from their concert at The Fine Line Music Café to WATCH.

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Thank you to the following individuals and businesses who donated goods or services to WATCH.

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We are grateful for a matching gift from the Piper Jaffray Companies Foundation; and for the following gifts made through workplace giving: Allina Health System Workplace Giving Program, Community Shares of Minnesota, Mile High United Way, Schwab Charitable Fund, University of Minnesota Employee Giving Campaign, Wells Fargo Community Support Campaign.

Volunteer Notes

- ✓ During the sentencing of a defendant convicted of possession of pornographic work involving minors, the judge made it clear that just because the victims were not in the courtroom or personally known to the defendant does not mean that it is a victimless crime.
- ✓ At times, in-custody defendants in domestic violence court appeared puzzled and confused. I wondered if they sometimes had a hard time hearing everything from inside the glass box. The judge did an excellent job of noting their uncertainty and took the time to carefully rephrase and repeat information in a loud, clear voice.
- ✓ In a case where the defendant was brought in on multiple violations of the no contact order, one of the attorneys commented, off the record, "the victim is just as bad – she keeps recanting."
- ✓ The judge in order for protection court did a very thorough job of asking the petitioner why she wanted the order dismissed and whether she had any questions. He asked, "Have you talked with an advocate? Do you feel safe? Has anyone pressured you? Tell me in your own words why you want this [order] dismissed," and "Do you have any questions?"
- ✓ A defendant was charged with violation of a no contact order because he was contacting the petitioner to arrange visitation with their children. At the omnibus hearing, the judge did not lift the no contact order, as the defendant requested, but he also did not remind him what no contact means or address the need for setting up a different kind of visitation system to prevent future violations.
- ✓ No one apologized for or explained the long wait time in court or gave direction regarding the process for checking in. It is as if people are supposed to know [what to do] by osmosis.
- ✓ Today I monitored an order for protection hearing where the respondent asked the judge if he could keep his guns. The judge denied his request in accordance with the law, but I was left wondering how the court knows if he turns in his firearms.
- ✓ One case was continued because the court thought the defendant was in custody in Anoka County. After the case was rescheduled, they learned he had been released from custody in order to appear in Hennepin County and had been sitting in the courtroom.
- ✓ At the suburban courts, negotiations between defendants, their attorneys, and the prosecutor are done in the open with many members of the justice system and the public within hearing range. This seems disrespectful of the defendants as sensitive information about the defendants is sometimes discussed.
- ✓ A defendant at Brookdale checked in at the beginning of the day and then waited until 11:45 am before someone asked him if he wanted to apply for a public defender.

Safe housing is key to protecting children

Last April, WATCH released its report of a two-year project monitoring children in need of protection or services (CHIPS) cases in Hennepin County. In addition to observing court hearings and reviewing case files, the project included meetings and interviews with judges, child protection workers, guardians *ad litem*, and community partner agencies. One concern raised by judges and child protection workers was the difficulty many families face in retaining safe, affordable housing.

Eighty-five percent of all child protection cases in Minnesota involve allegations of neglect. In many cases, children are temporarily removed from their family home during the investigation, and child protection is required to make "reasonable efforts" to ensure that children are returned to situations where they will be physically and emotionally safe. Of primary concern to the court is that families have access to "safe and suitable housing."

In the cases WATCH monitored, the typical family being investigated by child protection was a female-headed household living in poverty. For these families, access to decent housing is by no means assured. Because of state laws mandating short timelines for completing child protection cases, families are limited in the amount of time they have to meet court requirements. Every delay in finding suitable housing delays the children's return home. In some cases, lack of adequate housing was cited as a factor in a mother's losing custody of her children.

After learning of this problem in Hennepin County, WATCH collaborated with the Minnesota Department of Human Services to survey 300 child protection workers from around the state about their experiences surrounding this issue. Seventy-three workers from 38 counties responded to the survey and reported the following:

- 71 percent said they were aware of delays in family reunification due to the family's lack of safe and suitable housing.
- 13.7 percent said they were aware of families having their parental rights terminated by the court due in part to the lack of safe and suitable housing.

To gain a better understanding of the relationship between CHIPS cases and housing issues, WATCH began contacting child protection workers, housing officials, state human services agency staff, and community groups. In November, we received a grant from the Otto Bremer Foundation to assist us in identifying one or more strategies that could be employed to prevent women from losing their homes during a child protection investigation. We hope the project will lead to a series of recommendations that will assist women in maintaining safe housing for themselves and their children.

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Minneapolis, MN

WATCH Volunteers

When we look back on the year, and add up the accomplishments of WATCH volunteers, it is amazing to see the full impact of their efforts. Together with WATCH staff, 121 volunteers donated 5,674 hours and monitored 6,289 hearings last year. We extend our heartfelt thanks to each of them.

Thompson Aderinkomi
Maggie Airriess
Dena Andrew-Jaja
Laurie Bakken
Barbara Barry
Sarah Boespflug
Alyssa Bonner
Monica Booe
Jan Higgins Borgen
Ana Bortnova
Jocelyn Bremer
Kathy Brennan
Mary Ellen Briel
Kyle Brown
Wendy Brown
Dee Broxey
Hal Broxey
Dawn Bruggeman
Joan Campe
Sara Carlson
Elizabeth Casey
Martin Cech
Kristie Clark
Natalie Clifford
Isadora Collins

Janet Conn
Jennifer Cornell
Tim Davis
Toni Decker
Yoseph Delenesaw
Simone Dietzler
Tenzin Dolkar
Anna Donnelly
Sattam Elmoisheer
Charles Emerick
Halyna Eremeyeva
Melissa Evans
Brooke Fitting
Mary Grace Flannery
Neka Francis
Lance Frazier
Dave Gair
Peter Gillette
Ann Goddard
Nikki Griffin
Deborah Haile
Soo Han
Amanda Hegstrom
Claire Heitman
Kate Houns

Jacquelyn Jarvis
Bethany Johnson
Jennifer Johnson
Philip Johnson
Roxanne Johnson
Seth Kalhagen
Callie Keeney
Anna Kegler
Kate Kelly
Nicolle Kitt
Nancy Kleffman
Kelsey Knish
Terry Kramer
Melody Lee
Lew Linde
Erica Madore
Sue Maki
Aliya Maseelall
Emily Matejcek
Anna Mazig
Barbara McDonald
Emma McIntosh
Vanessa Milbradt
Hilary Miller
Mary Miller

Suyapa Miranda
Anna Moon
Gina Mount
Owen Murphy
Tamara Murphy
Amanda Murr
Ann Nasseff
Naomi Ndubi
Amanda Olson
Erin Osborne
Agathe Panaretos
Jill Peacock
Sarah Pennie
Brittne Perfetti
Asta Petkute-Mruz
Lehoan Pham
Truennetta Phillips
Arlene Pine
Jessica Plotz
Tiffany Poscher
Mardell Presler
Amanda Pulse
Monique Riley-Pratt
Susan Rivard
Erik Rootes

Emily Rosenberg
Thavy Sar
Denny Scharlemann
Kristine Schneider
Leah Schreiner
Alexandra Snyder
Kaitlyn Sperl
Mike Stewart
Paul Strand
Sara Thompson
Rachel Thurlow
Denabo Tuse
Shiveta Vaid
Russ VanHeel
Amy Wallace
Dominique Walsh
Amanda Welter
Julia Westley
Brian Whitt
Mai Chia Yang
Olena Zayika