



## GUIDE TO GAINING ACCESS TO YOUR COURTS AND COURT RECORDS

An open and transparent court system is one of the hallmarks of the American legal system. There are many places across the country, however, where the public is denied access to the courts. This happens when judges refuse to allow observers into proceedings, through the denial of requests for public records and calendars, or when courts charge exorbitant copying and “handling” fees to obtain records. The following illustrate these challenges:

*The rule is that all members of the gallery have to be seated. One judge had maintenance take out the benches in his courtroom so court monitors could not observe his hearings. Now no one else can either.*

*We are charged for the actual copies and for the clerk’s time, which is essentially her hourly salary. There is no way our small non-profit can afford that. These are public records.*

*For a couple of years, we were not having a problem with access to hearings. They have changed the procedures though and we now have to file a ‘motion to intervene.’ Every motion we have filed has been denied. We are often asked to attend proceedings by advocates and victims. The only option we have is for volunteers to go to the courthouse, sign in, and sit outside the courtroom while the hearing is in progress.*

Most court monitoring programs, including WATCH, are met with initial resistance from the courts or find their access to information restricted in different ways after they expose a flaw in the system or are critical of the court. We have also heard reports that, with budgets shrinking, courts are looking for ways to increase revenues in any way possible. If you’re a court monitoring organization (or hope to be) you will likely have to address one or more of these scenarios. We hope this guidebook will help you to do so.

*Gaining Access to Your Courts and Court Records* provides an overview of the legal basis for access to the courts as well as ideas and strategies for gaining access to public court documents and calendars. Although designed for court monitoring programs and advocates, anyone who strives for more open and transparent courts will find this guidebook useful.

## ACCESSING CASE DATA

*Recently, the cost of copying felony complaints in our jurisdiction went up from .10 per page to \$5 per document. Since most of our complaints are two pages we are now paying \$2.50 to copy each page. That might not mean much to a person copying one complaint, but as a court monitoring organization we copy 20-30 complaints a week. There is no way we can afford that.*

Depending on your court monitoring group you will need access to a variety of forms of public data.<sup>1</sup> Most groups will need to access the daily court calendar; others gather additional supporting documentation, such as police reports, criminal complaints, and protective orders. Some groups provide criminal complaints to volunteers so they can better understand the cases their watching. You will need to determine what supplemental information is important for your work and what you are capable of gathering and storing at any given time.

Fortunately, many courts now have hearing and case information available to the public on-line. Privacy laws in each state determine what is available to the public. Some of this information will be free, like court calendars, other information like police reports and criminal complaints, may have a fee. Most states either charge “reasonable fees” or “actual costs.” This amount varies widely and what is considered “reasonable” to the state may not be to you. Be sure you understand the fee structure prior to requesting information.

### *Ready resource*

You can find a state-by-state breakdown of information on public access to court records, privacy laws, and fees at the National Center for State Courts website.<sup>2</sup> NCSC is an excellent resource for information on court policies and procedures. We reference them several times in this guidebook and encourage you to explore their site.

If court calendars and records are not available on-line you will need to contact the records office or clerk to determine the process for obtaining this information. How the process works may depend on the availability or willingness of court staff to assist you. For example, clerks may be in charge of posting the calendar on the courtroom door or making copies of files for the public when requested and their cooperation is key. One group shared the following with WATCH:

*Our court clerk does not like to see us coming. We represent extra work for her and she often tells us to come back later.*

<sup>1</sup> WATCH only gathers and publishes information that is part of the public record.

<sup>2</sup> Start with NCSC’s *Public Access to Court Records* resource guide at <http://www.ncsconline.org/wc/CourTopics/ResourceGuide.asp?topic=PriPub>

Other organizations have taken a variety of creative approaches to obtaining court records.

*Our clerk is very cranky but she is particularly receptive to one of our older volunteers. We always send this volunteer to pick up the calendar.*

*We live in a small town and are not ashamed to admit we bake our court records clerk brownies to thank him for all his help. What can I say, it works.*

If clerks are unwilling or unable to handle your requests you may want to offer additional options (that don't require baking). See if you can work with your court administration to come up with a plan. Consider the following:

- Can a volunteer or staff person come early to look at the calendar or court records (that morning or the day before)?
- Can a volunteer or staff person make the copies themselves?
- Is there a version that could be e-mailed?
- Is it possible to use a hand held scanner to save documents to a laptop?<sup>3</sup>
- Can you collaborate with another organization to share the cost? There may be an advocacy or citizen's group looking to access similar information

When you come to a resolution, consider creating a memorandum of understanding to outline how the process will work. This can be particularly helpful if there is high staff turnover at your court or your agency. It may not be possible to come to an agreement. If you find yourself in this scenario

Finally, while it is helpful to have case information and hearing dates, it is entirely possible to monitor your courts without this information, and we encourage you to send monitors to court with or without it. They can still provide valuable insight and information on the process even if they don't know the specifics of every case.

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<sup>3</sup> With permission from the clerks, WATCH interns take a handheld image scanner (which cost \$130) and laptop to the court records office. They find the complaint, pass the paper copies through the scanner, and the paper complaint is stored as an electronic document on the laptop. Interns then come back to the office and print out the complaints for inclusion in our files. This system works very well; the copies produced from scanning are better quality than photocopies and the scanner paid for itself the first time we used it. We're also saving the electronic versions and thinking about ways we may be able to use them for future research projects.

## THE LEGAL BASIS FOR ACCESS TO THE COURTS

In general, criminal court hearings are open to the public, as outlined by the U.S. Supreme Court:

In *Richmond Newspapers, Inc. v. Virginia* (488 US 555 (1980)), the Supreme Court held that the First Amendment affords the public and the press a constitutional right of access to criminal trials. (*Id.* At 580.) In reaching this conclusion the Court analyzed history to find that criminal trials traditionally have been open to the public, emphasizing that the presumption of open judicial proceedings has “long been recognized as an indispensable attribute of an Anglo-American trial.” *Id.* at 569. The Court went on to conclude that “[f]rom this unbroken, uncontradicted history, supported by reasons as valid today as in centuries past, we are bound to conclude that a presumption of openness inheres in the very nature of a criminal trial under our system of justice.” *Id.* at 573. The Court concluded that “[a]bsent an overriding interest articulated in findings, the criminal case must be open to the public.” *Id.* at 581.

The court affirmed this again in *Press-Enterprise v. Superior Court*, 464 US 501 (1984), the U.S. Supreme Court stated:

The value of openness lies in the fact that people not actually attending trials can have confidence that standards of fairness are being observed; the sure knowledge that *anyone* is free to attend gives assurance that established procedures are being followed and that deviations will become known. Openness thus enhances the basic fairness of the criminal trial and the appearance of fairness so essential to public confidence in the system.

For good cause a member of the public can be excluded from proceedings:

To deny access to criminal trial proceedings, the State must show that the denial is necessitated by a *compelling state interest*, and that the denial is narrowly tailored to serve that interest. *Globe Newspaper Co. v. Superior Court*, 457 US 596 (1982).

In some states, certain proceedings are always closed, such as juvenile court proceedings. In other states, judges have discretion. In Minnesota, for example, judges may exclude spectators from courtrooms in sexual assault cases involving minors.

Although the U.S. Supreme Court has been clear that criminal proceedings should be open they have not been as clear about civil proceedings. Most states have concluded that civil proceedings should be open to the public and many lower federal and state appellate courts have affirmed this. To find your state’s statutes visit the NCSC website at [www.ncsconline.org](http://www.ncsconline.org).

## BEFORE YOU KNOCK ON THE COURTHOUSE DOOR

Prior to monitoring we suggest that groups meet with court personnel to introduce themselves and their project. This relatively simple gesture allows you to set the context for your work, learn about the system, and address any potential stumbling blocks, like access. This is not a guarantee that you will not run into problems but it can calm the fears of court personnel who are nervous about or resistant to court monitoring. It can also lay the groundwork for respectful, positive relationships in the future. We suggest you meet with judges, attorneys, administrative clerks, deputies/bailiffs, probation officers, etc.<sup>4</sup> Questions to ask related to access include:

- Are you aware of any policies or practices that limit access to proceedings or information?
- Do you have any suggestions for how we handle this?
- Can we contact you if we run into problems?

These answers will provide valuable information on how you should proceed. In addition to meeting with court personnel we suggest you participate in relevant court and community-based committees working on similar issues. Through this you can identify your allies and supporters and know where to turn when problems arise.

Prior to monitoring you will also need to create policies and procedures for your volunteers to follow if they are denied access. If WATCH volunteers are refused access to court or told to leave we ask that they comply. We do not want them to argue with court personnel or cause a disturbance. Access problems are handled by staff through formal avenues and not during the course of a hearing or trial. We suggest you develop your own policy so volunteers know what to do.<sup>5</sup>

Finally, educate your volunteers on appropriate court behavior. There could be legitimate reasons why they are denied access (a pocket knife in their purse) or asked to leave (texting during proceedings). Be sure your volunteers understand court policy and etiquette and act appropriately.

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<sup>4</sup> WATCH's *Developing a Court Monitoring Program* manual contains an entire chapter on interviewing court personnel, including sample questions and interview guidelines. Visit [www.watchmn.org](http://www.watchmn.org) for more information.

<sup>5</sup> WATCH's *Managing Court Monitor Volunteers* manual provides information on a wide variety of volunteer court monitor topics, including creating volunteer policies. Visit [www.watchmn.org](http://www.watchmn.org) for more information.

## STATE LAWS VERSUS COURTROOM CULTURE

*They say that the courts must be kept closed so children will not be harmed. Children are not in the courtroom, nor are they put on the stand in most divorce, child support, or child custody cases. So to say the reason the court must be closed to protect children is hogwash.*

As stated earlier, both state and federal statutes support public access to court proceedings. Courts, however, have their own customs and culture with judges, attorneys, and staff following established expectations, practices and informal rules. To a great extent the culture of your court and the power of its players determine whether or not you can access proceedings.

You will need to know your state statute as well as the formal or informal policies that govern proceedings. If you're not allowed in court it may be impossible to tell what the culture is like. You may be able to learn this information from interviews with court personnel and/or meetings with advocates.

In trying to figure out how to solve your access issues, ask yourself the following questions:

### Statute or Policy Issues

- *What exactly does the law state?*
- *Is it implemented properly?*
- *Are legislative changes needed?*
- *Is there data that would help address the problem?*
- *Who else would collaborate with you on reviewing the issue or assisting in creating the necessary change?*

### Court Culture Issues

- *How long has the court operated this way?*
- *Is this a formal or informal policy?*
- *Is the issue related to one person or the entire court?*
- *How are victims and defendants impacted?*
- *What is needed to create change?*
- *Who has the power to create that change?*
- *Is there data that that would help address the problem?*

You are most likely facing problems with the laws' implementation or interpretation, not the statute itself. However, if you feel a legislative change is needed, contact a lawyer or legislator for information on how to proceed. If you are a domestic violence or sexual assault program, contact your state coalition and speak with the director of public policy.

The next section addresses the culture of your court, and includes actions to take and conversations to have with individual court personnel.

## ADDRESSING INDIVIDUAL BEHAVIOR

If an individual is denying you access, the first step is to have a conversation with them. This may seem basic but WATCH has worked with organizations that have never had a direct conversation with their court staff.

It would be helpful to gather some background information on the person you'll be meeting with. Contact your allies in the system to find out if they have suggestions on how best to work with this person. You may learn that they are more receptive to phone calls rather than e-mails, for example, or are more likely to respond to your executive director than you.

Approach these conversations with diplomacy. You may not get the exact outcome you're looking for but these meetings will lay the groundwork for future interactions. Your calm, credible tone will serve you down the road.<sup>6</sup> The main points to cover include:

1. Explaining, reiterating, or clarifying your reasons for accessing the courts
2. Understanding or clarifying their reasons for denying or limiting you access
3. Creating a plan or next steps for resolving the issue(s)

You can start the conversation by saying that you understand that the law (or rule) allows the type of access you are seeking, so you are confused about being denied it. Depending on the restriction being imposed, you may also want to say:

- *I'm confused about how this is being interpreted and was hoping, since you have been working in this area for some time, that you could help clarify it.*
- *We have been told that we are prohibited from having access to [court records, public hearings, etc.], but our understanding of the law is that this information is open to the public. Can you tell us what the restrictions are based on?*
- *We are being denied access to information/courts that we believe are public. Can you explain why this is happening and how we can gain this access?*

Be prepared to talk about your program goals and philosophy so that you can respond to myths and misconceptions about court monitoring and address any issues court staff may have with your volunteers.

In the following section we've provided sample statements from court personnel as well as suggestions for how you might respond.

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<sup>6</sup> WATCH offers a *Providing Feedback to Your Courts* webinar. Visit [www.watchmn.org](http://www.watchmn.org) for more information.

From a judge

*I appreciate the work you're trying to do but we don't need court monitoring here. Judges receive annual evaluations as part of their employment.*

In this scenario you should educate the judge about the type of information you are gathering (particularly if you are monitoring the entire process and not just the judge) and what you plan on doing with your data (disseminating a report or reviewing the information internally). Additional responses include:

- *Hearing how the general public views the system is different than receiving an annual evaluation.*
- *Monitors have positive feedback as well.*
- *What problems do you think we should focus on?*
- *What information would help you?*

Judges may more readily listen to other judges. Several Hennepin County, MN judges (where WATCH is located) are willing to speak with judges in other jurisdictions or write letters of support. Contact WATCH for more information.

From a clerk

*I think it is inappropriate for strange people to come into these proceedings. If you're not a friend or family member I don't think you should be in court watching. I ask your volunteers to leave because their presence makes people uncomfortable.*

Do not underestimate the importance of clerks and their position. They can hold a lot of power in terms of the flow and functioning of a courtroom. Having a positive relationship with your clerk can be very beneficial.

If a monitor is doing something to make people uncomfortable you'll want to be sure to address it immediately. It appears in this case, however, that it is the clerk who is uncomfortable. Questions to pose:

- *Have you heard this feedback from individuals?*
- *Is there something specific that our monitors are doing? If so, we would like to know so we can address it.*
- *We are happy to explain our presence to anyone who feels uncomfortable. In our experience people are appreciative of our presence when they learn what we do.<sup>7</sup>*
- *These proceedings are open to members of the public so we plan to continue attending. Is there anything we can do to make you feel more comfortable with our presence?*

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<sup>7</sup> Generally, defendants don't know there are WATCH monitors in the room. If they ask we tell our volunteers to say, "I'm just here observing proceedings. We want to make sure the system is handling cases appropriately." Usually, if posed neutrally, defendants and their families appreciate that someone is watching the proceedings.



From court security

*We ask your volunteers to leave because court is too hectic and crowded to have them in there. Everyone else is there for a specific purpose. If you don't have a hearing you shouldn't be there.*

Addressing safety concerns is one of the key functions of court monitoring. If your court is crowded and chaotic, court monitoring can push for changes that create a safer environment for everyone. You will want to determine whether court security does not want you there or has been instructed by the judge to ask you to leave. Once you ferret this out you can address it accordingly. Questions to pose:

- *Is there something specific that our monitors are doing that is adding to the confusion? Is there anything we can do to help alleviate that?*
- *Having a monitor present to document the situation can provide data and that can create change, such as the need for more security or the impact of budget cuts on court safety.*
- *We are concerned that both the public and court staff are put at risk by this situation. How can we work together so that our presence is not burdensome to you?*

Depending on your jurisdiction you may have one individual responsible for court security or an entire team. If you have a larger team you may want to introduce yourself at a staff meeting or in-service training. This will allow you to clarify your role and ensure that court security receives a consistent message about your work.

From a judge

*The last time you people came into my court you misquoted me in your newsletter. I'm not going to let that happen again.*

How you respond to this will depend on if you have actually misquoted the judge or if he or she feels you have misunderstood or mischaracterized them.<sup>8</sup> If there is a disagreement of opinion, consider the following:

- *We report on the public's perception of what is happening. They often have a different viewpoint than court personnel. We think it is important to report that viewpoint.*
- *We hope that our difference of opinion on this issue won't end the public's ability to access the courts.*

If you find yourself in the unenviable position of having misquoted someone you will need to apologize and print a correction in your newsletter (if that is where the quote appeared). Building credibility is key to any successful court monitoring program so you'll want to be sure this is not a regular occurrence. Ways to avoid misquoting court personnel include training volunteers on taking accurate and detailed notes; debriefing

volunteers to clarify quotes and check for accuracy; contacting other people in attendance at the hearing to verify the information; requesting a transcript of the hearing (although this can be very expensive).

From a clerk

*Your volunteers ask too many questions. I don't have time to help them figure out when the cases they want to see are being heard. I tell them to wait outside. Sometimes I just don't have time to get to them.*

Hopefully this is a problem that can be worked out ahead of time. Check in with court staff prior to attending proceedings to determine the best way to gather information and ask questions. Some questions to pose in this situation:

- *We'd like to fix this situation. Do you find this happens with all of our monitors or is it someone specific?*
- *We can instruct our monitors not to ask you questions or to wait until a break or between hearings. What would work best for you?*
- *Is there some other way we could gather our information without burdening you?*

You can follow up with a letter re-stating any new procedures your volunteers will follow. Then educate your volunteers on who to speak with at court if they need additional information. Be sure and follow up with the clerk in a few weeks to see how the new system is working.

### **ADDITIONAL OPTIONS**

There are times when even the most diplomatic conversations and well-crafted plans fail. The following ideas are more involved and time consuming but if your previous attempts have not been successful these may prove to be useful options.

1. Create an access task force or coalition

You can use the information you've gathered through your conversations and documentation to help guide your work. Use this information to start your conversations and develop an action plan. Invite advocacy groups, court personnel, and community activists to join your efforts.

2. Submit a formal request to the court asking for a policy change

This may have been part of your previous efforts but if you have not done this yet do so now. This will provide additional documentation of your continued attempts and you can reference it later ("...we have called the judge, written her a letter, and filed a formal request with the court, all to no avail...").

3. Submit a letter of complaint to the clerk's office, board on judicial standards, bar association, sheriff's department, or other agency with authority

If your efforts are thwarted by one individual's consistently inappropriate behavior filing a complaint to their supervisor or governing board may be appropriate. You should investigate if the governing board you are filing with handles the types of complaints you are making and what their typical response is. Boards can take no action or issue private or public reprimands. In many cases the decisions and actions of boards are confidential.

#### 4. Implement a short-term research project to gather data

A research project may help you identify problem staff or themes (e.g., everyone gives a different reason for denying you access, only certain monitors are asked to leave, etc.). The information could also be used for internal review, for publication in a report, submitted to court staff, for a newsletter article, or for distribution to the media.<sup>9</sup>

#### 5. Contact the media

Perhaps a television station, radio program, or newspaper would find the issue compelling and run a story on it. You could also write letters to the editor or opinion pieces on the topic and push for their publication. Any time you invite the media in you run the risk of having coverage slanted against your interests. You will want to use this strategy judiciously.

### JUST BECAUSE YOU CAN, SHOULD YOU?

Just because you're legally allowed in a courtroom does that mean you should be there? There may be times when your volunteers will want to leave a courtroom on their own accord or because your volunteer guidelines require it. Compelling reasons to leave a courtroom include:

- *You know someone involved in the case.* Monitoring cases in which you know of or have a relationship with any of the parties creates a conflict of interest you should avoid.
- *If there is no purpose served by your staying.* A WATCH monitor was monitoring a jury selection for a sexual assault trial when a potential juror was asked if he knew anyone who had been a victim of sexual assault. The juror stated that he would prefer not to answer the question in front of the other jurors. The judge asked the jurors to step outside and, although not asked directly, the WATCH monitor did as well. It felt appropriate to respect the juror's privacy in that situation.
- *To give up a seat in a crowded courtroom so that a family member can attend the hearing.* If there are already a fair number of people in attendance (at high profile cases for example) it may be more appropriate to leave. Although not reporting

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<sup>9</sup> Contact WATCH for information and support on setting up a short-term court monitoring project.

their findings back to you, the press and general public serve the monitoring function in those instances.

- *If you become upset or overwhelmed.* Volunteers may choose to leave a hearing if they find the testimony or information too graphic or difficult to hear. We do not want volunteers becoming emotionally overwhelmed in court.

Common sense should prevail in these decisions. If the public is served by your leaving a proceeding, you should.

## **CONCLUSION**

We hope that one of these strategies holds the key that opens your courthouse doors. Observing court proceedings is critical to creating an informed and involved public and to holding the legal system accountable to its core purposes of protecting public safety and holding perpetrators accountable.

## **NEED HELP?**

WATCH provides training, technical assistance, and a wide variety resources designed to help you access and monitor your local courts. Contact us for additional help or to share your access-related experiences.