



Volume 14, Issue 3

Summer 2006

## Victim impact statements—Do they make a difference?

By Mary Lay Schuster

**WATCH volunteer and Professor, Department of Rhetoric, University of Minnesota**

**Amy Proppen doctoral candidate,  
Department of Rhetoric, University of Minnesota**

### Introduction

Victim impact statements do make a difference, according to a recently completed WATCH study. Contrary to what the general public might think, their influence, though, is generally not on sentence length or disposition, i.e., whether a defendant is put on probation or sent to prison. Rather, the judges and advocates interviewed for the two-year study point to their value in helping victims to reach emotional closure; bringing the humanity and reality of the victim into the courtroom; educating the court, defendant, and observers about a crime's personal toll; and offering pertinent information for the conditions attached to the final sentence. This was confirmed by WATCH's observations of numerous victim impact statements at sentencing hearings in domestic violence and sexual assault cases.

A victim's right to present an impact statement at sentencing summarizing the trauma and damages suffered as a result of the crime, among other things, and to provide information and recommendations during the pre-sentence investigation are outlined in Minnesota Statute 611A.037-038. This legislation, passed in 1997 and 98, represents

a significant departure from previous practices under which victims virtually had no say in criminal cases. However, no universal standards, professional guidelines, or "best practices" exist to tell judges, the ultimate decision makers, how to weight victim impact statements. WATCH thus set out to discover to what extent victim impact statements affect sentencing decisions and acceptance of plea negotiations in local judges' courtrooms. WATCH further decided to find out from advocates working directly with victims what motivates victims to offer an impact statement and what features make a statement persuasive.

At the outset, WATCH sent letters to all judges in Hennepin County informing them of the project and inviting them to participate. Twenty-two judges agreed to 45-minute, face-to-face interviews between November 2004 and January 2006. In spring 2006, similar interviews were conducted with 15 community and system victim/witness advocates working with domestic violence and sexual assault victims in Hennepin and Ramsey Counties.

To record firsthand observations, WATCH volunteers attended 74 sen-

## WHAT'S NEW

### Welcome

WATCH gives a warm welcome to Heather Wolfram, our new court monitoring coordinator, who started in June 2006. Heather has a Masters in Social Work (MSW) from the University of Minnesota and is a Licensed Graduate Social Worker (LGSW). Prior to graduate school she worked as a Systems Coordinator for the Family Support Center in Chippewa County, Wisconsin where she coordinated a domestic violence and sexual assault court monitoring program.

### Volunteer Training

WATCH relies on volunteers to conduct the majority of court monitoring that we undertake each year. WATCH provides training and orientation to the court process and the opportunity to observe hearings and participate in special projects. The next training session will be held on Saturday, September 16, 2006 in Minneapolis. Please visit [www.watchmn.org](http://www.watchmn.org) or contact Shahidah at 612-341-2747, ext. 2 or [smaayif@watchmn.org](mailto:smaayif@watchmn.org) for more information.

## INSIDE THIS ISSUE

2 LISTEN TO GIRLS

3 DOMESTIC VIOLENCE  
REPORT

5 THUMBS UP/ DOWN

Continued on page 6

# Girls leading the way to a better world

By Marna Anderson

Recently, I co-facilitated a discussion on gender-based violence with 20 women representing the countries of South Africa, Kenya, Nigeria, Indonesia, India, Israel, and the United States. These women were brought together as mentors for the first-ever International Girls Summit, a project designed to raise girls' voices on issues of education, health care, economic development, and gender-based violence. Each country had a team of five girls ranging in age from nine to 19. For six days, the teams developed action plans to improve the lives of women and girls in their home countries.

Each team presented its action plan at an indoor event at Macalester College on the hottest day of the summer. I attended the Saturday evening presentation looking for relief from the oppressive heat and for hope after a week of reading criminal complaints that detail the horrendous things people do to their wives, children, and partners.

Listening to forty girls from all around the world share their vision for the future was like a much-needed cool breeze.

- The South Africa team will make documentaries telling women's stories of sexual assault and air them over "16 days of activism" to raise awareness and encourage women and girls to use the newly-passed Sex Offenses Act to report these crimes.
- The Israel team plans to start a mentorship program for Arab and Jewish girls to teach them to be assertive and independent.
- The team from India has as its goal to enroll at least 150 non-enrolled girls in school.
- The U.S.-Minneapolis team is going to create a pilot curriculum in 2006 for five Minneapolis schools to raise awareness about the media's negative portrayals of girls and women and to educate girls to confront the objectification of the female body. Their goal is to have the curriculum in all Minneapolis schools by 2008.
- The Nigeria team will implement a documentary-based media campaign on girls infected with HIV/AIDS.
- The teams from Kenya, Indonesia, and the U.S.-DC outlined plans to ensure gender equity in and access to education.

The evening was celebratory, and the girls' pride was evident in their voices and expressions. They believe they can change the world. I believe they can, too. Ensuring education and economic opportunity for all females and halting gender-based violence are revolutionary steps. And leadership from girls can help to propel us down this path to a better world.

WATCH can play a part in bringing about the changes sought by the participants of the International Girls Summit. The mentors from Indonesia, South Africa, India, and Kenya were empowered by the idea of using court monitoring as a tool to evaluate the implementation of new sexual assault and domestic violence laws. They also spoke about the importance of informing the public about women's real life experiences of violence and the legal remedies that can be used to address them.

As you will see from the victim impact study and the domestic violence court report in this issue, WATCH's monitoring and research provide valuable information for improving the justice system as it seeks to protect victims and hold offenders accountable. The public's presence in the courtroom, along with feedback to the justice system, the public, and policy makers, can help to bring about the world envisioned by these girls and women.

Equal education. Health care. Freedom from rape and exploitation. These should not seem like far off, pie-in-the-sky dreams. They are basic human rights and we all have the responsibility to make them a reality. If these girls can imagine a world without gender-based violence, a place where women are free to make their own choices about vital aspects of their lives, then we should let them lead the way and help them to make it happen for their sake as well as our own. We need to envision this world with them and follow their lead — even when the heat is oppressive and we need relief. Their voices are full of possibility and hope and we should listen to them.

# 2006 Hennepin County Domestic Violence Court Report

By Dawn Dougherty, Court Monitoring Coordinator

## Introduction

With the establishment of the Hennepin County domestic violence court in November 2000, Hennepin County made a significant step towards acknowledging the importance of effectively prosecuting domestic violence crimes at the misdemeanor level. This specialized court was created to handle domestic violence crimes, including assaults, violations of orders for protection, interference with 911 calls, violations of conditions of release, and probation revocations.

One year later, in November 2001, WATCH published its first domestic violence court report entitled, *Judicial Response and Demeanor in Domestic Violence Court*. The 2001 report highlighted a variety of themes and patterns of inconsistency within the new court and offered recommendations for improvement. In this report, five years later, WATCH revisits those recommendations and takes a closer look at the effectiveness of the Hennepin County Domestic Violence Court in handling cases of misdemeanor domestic abuse.

## Project Design

WATCH has been monitoring domestic violence court cases since the court's inception. Typically, volunteer monitors or staff members observe these court proceedings three times a week. This report reflects data gathered from seven weeks of daily monitoring from April to May 2006 as well as research on defendant criminal histories and case outcomes. An additional fifteen days were spent observing the specific functioning of the court with special attention to courtroom decorum, interactions among court personnel, audibility, and safety issues.

WATCH volunteers monitored 234 cases in front of nine different judges.

Of those, 156 were completed, either through sentencing or dismissal, at the time of this report's publication. Additionally, WATCH staff interviewed or spoke with nine judges, two city attorneys, a public defender, a probation officer, and several advocates to obtain their perspective on the court and its impact. WATCH staff also attended regular meetings of the Family Violence Coordinating Council (FVCC) and the Domestic Violence Court Steering Committee, which was specifically created to focus on the court's day-to-day operations.

## General Summary

WATCH's 2001 study found a variety of problems and inconsistencies in domestic violence court, and WATCH has been paying particular attention to these and advocating for change over the past five years. Bench members and court personnel have also been working towards improving the functioning and orderliness of the court.

This 2006 report shows that, overall, the court has achieved greater consistency in the quality of services and the handling of cases. The following are some of its successes:

- Domestic violence court moved to its new space at the public safety facility in 2004. This dedicated space is closer to the jail and has more meeting rooms and fewer interruptions than the court's former home at the government center.
- New recording devices contribute to a quieter and more orderly courtroom when coupled with clerks' announcements that the proceedings are being recorded and conversations in the gallery may be picked up.
- A new slate of domestic violence court judges with a particular interest in hearing domestic violence cases has

been appointed. The roster includes Judges Heidi Schellhas, Susan Burke, Francis Connolly, Richard Hopper, William Howard, Janet Poston, Marilyn Rosenbaum, Richard Scherer, Mark Wernick, and Lloyd Zimmerman.

- The bench has better knowledge of the complicated dynamics of domestic violence and greatly improved consistency in the explanation and clarity of no contact orders.
  - The courtroom is orderly and well run; judges and deputies assist in maintaining a calm and controlled process.
  - Monthly Domestic Violence Court Steering Committee meetings provide a forum for reviewing policies and procedures. The committee is currently reviewing best practices and procedures for the domestic violence court bench.
  - A domestic violence court revocation grid developed by presiding domestic violence court Judge Heidi Schellhas and approved by the domestic violence court bench is now in place. The grid provides a framework for handling domestic abuse probation violations and creates greater consistency among judges in revocations.
- Ongoing problems that still need improvement include violations of no contact orders by the defendant in the courtroom, long wait times and delays, and audibility during cases that require interpreters. WATCH monitors noted the following:
- Violations of no contact orders in the courtroom continue to present a problem for both victims and court personnel. Monitors observed such violations and have heard from court personnel about the difficulties in dealing with them.

□ Clerks and judges do a better job today of informing the gallery of the reason for delays compared with 2001, but delays are still significant. The wait time for cases has not improved, and many victims spend several hours waiting for their cases to be heard.

□ While overall audibility in the courtroom was good, routine audibility problems were noted in cases involving language interpreters. The regular noise level of the court made it difficult for the interpreter to hear the proceedings and for the judge to hear the interpreter.

□ Though not a widespread problem, WATCH monitors did witness several instances when court personnel made comments in the presence of the public regarding their frustrations with the process or with other staff. Unfortunately, such comments set a negative tone and may erode the public's trust in the criminal justice system.

### **Key Concerns and Recommendations**

WATCH monitors noted a variety of factors related to the overall decorum of the courtroom. Judges indeed played a major role when they were on the bench, but there was a substantial amount of time when judges were not in the courtroom (either they had not yet arrived or were waiting in chambers for cases to be ready) and other court personnel were responsible for the decorum. In the judges' absence the clerks, sheriff's deputies, attorneys, probation staff, and advocates all contributed in some way to the atmosphere and professionalism of the courtroom. Monitor notes are in italics.

#### Judicial Demeanor

When the judge was on the bench he or she set the tone for the court through their presence and demeanor. Overwhelmingly, the judges WATCH monitors observed were appropriate in their demeanor and professionalism and created a calm, smooth-running courtroom.

*Judge continually stated concern for the victim; wanted to ensure interpreters had time to translate.*

*Judge was bureaucratic and stern.*

*Judge was thorough in explanations to defendants each and every time.*

*Judge was good at explaining no contact; demonstrates concern for victims.*

*Judge poured a cup of water for coughing woman in gallery, has quiet gallery, polite yet stern when appropriate.*

*Judge recalled a defendant who screamed "F\_\_\_ you!" and other things at deputies. Judge was very stern with the defendant, which was surprising given this judge's usual kind demeanor. Judge threatened to hold defendant in contempt of court.*

*The judge told the defendant that drinking was like killing yourself. The defendant started to cry.*

On some occasions monitors noted a judge's response lacked understanding of the dynamics of abuse. The first related to a comment made by a judge while ordering a defendant not to have contact with the victim:

*Judge stated, "It indicates to me that the victim is not afraid if she let someone who is banging, threatening, and throwing rocks into the residence."*

There are many reasons why a victim might let her batterer into her home. Perhaps if neighbors were watching and she was embarrassed by what was happening; if she thought his anger was growing and she might incur further harm by not letting him in; if she thought she could deescalate the violence; if she didn't feel safe calling the police; if she was being pressured by other people in the home. Women faced with limited options may choose an option that, to a judge, may seem like compliance but may actually be a stalling or de-escalation attempt.

Finally, there was one instance when the judge's absence was a cause for concern and discussed among the court personnel within hearing range of the gallery.

*Judge was not on time. Court staff kept asking clerk if judge has arrived yet and expressed concern about the ongoing tardiness of this particular judge. Judge did eventually arrive and had apparently been ill.*

#### Attorney Demeanor

Monitor comments related to attorneys were limited since most of the attorneys' work is outside of the view of monitors. Monitors are waiting inside the courtroom and attorneys are often out in the hall, in the defendant waiting room or in the meeting room behind the gallery working on cases. The following are attorney-related comments:

*Prosecutor was very prepared and eloquent.*

*Prosecutor often spoke personally with the victim. Advocate thanked the prosecutor for doing so and stated that allowing the victim to make decisions empowered the victim.*


*Four new attorneys in the public defender's office. All did well except one, but it is possible she was nervous for her first appearance.*


There was one instance in which an attorney's frustration flared up in court:

*Defense attorney was visibly angry about missing the 10 am deadline for sentencing and sarcastically uttered, "I love my job."*


While negative comments like the one above were not the norm, they were noted by monitors, as in the case mentioned previously about the tardy judge. While we understand the difficulty of working under pressure and in the hectic pace of domestic violence court, it is important to remember that, while in the


# Thumbs Up/Thumbs Down


 Thumbs up to the Fourth Judicial District Court for agreeing to pay for interpreters, when needed, for Family Violence Coordinating Council and sub-committee meetings. This is an important and welcome step toward increasing accessibility for meeting participants.


 Thumbs down to the U.S. military for shirking its responsibility to act swiftly and firmly to protect women in the armed forces from sexual harassment and assault by their superiors. The Miles Foundation, a nonprofit advocacy group, reports some 508 women serving in the military have complained of sexual assault since the invasion of Iraq in 2003, with little result.


One woman related how three sergeants directly in her chain of command began propositioning her for sex almost from the minute she arrived overseas. When she reported the first incident to the equal opportunity officer, he refused to take the report and told her she was on her own. Needless to say, she did not bother reporting the subsequent harassment and has refused to return to Iraq for a second tour of duty. For nearly 40 years, the military has been studying this issue and providing training for its staff, yet women still find themselves choosing between their career and protecting themselves from abuse.

 Thumbs up to the Minnesota legislature for passing a victim notification bill to assist victims of sexual assault. The bill requires a prosecutor who dismisses charges or decides not to charge a sexual assault case to notify the victim of the decision. In addition, when charges are dismissed, s/he must also record the reason for the dismissal.

 Thumbs down to the judge in Nevada's Henderson Municipal Court for excluding the public from a restraining order hearing in late June involving fellow judge Steven Jones. Judge Jones, the presiding family court judge, appeared in court in response to a restraining order taken out by his girlfriend, whom he reportedly assaulted. The judge told a dozen advocates to leave the courtroom, allowing only the petitioner's advocate and members of the media to remain. If the judge wants to avoid the spotlight of public scrutiny, he should clean up his act.

 Thumbs up to the Oregon and South Dakota legislatures for recently passing sex offender laws that will allow their states to be included in the national Sex Offender Public Registry web site. The site makes public data on registered sex offenders available nationwide.

 Thumbs up to the U.S. House of Representatives for passing a \$25 million increase in Violence Against Women Act (VAWA) funding. These funds will allow critical programs created in VAWA 2005 to be initiated. Let's keep our fingers crossed for a "thumbs up" for the Senate when it votes on these increases in August.

 Thumbs up to a group of women in Fort Sill, Oklahoma, who are working with the Oklahoma Coalition against Domestic Violence to monitor order for protection hearings at the local military base. The group's primary objective is to identify how cases involving active-duty service members are handled and compare them to those involving civilians. Given the known lack of attention paid by the military to criminal matters involving violence against women, it is vitally important to assess how civil matters are handled as well.



tencing hearings between November 2004 and April 2006 where victim impact statements were offered. They recorded the content of the statement and its apparent effect on the sentence. The study's authors attended an additional 15 sentencing hearings—three in Ramsey County—to observe the dynamics in the courtroom during the reading of an impact statement.

### Effects and benefits of victim impact statements

The judges interviewed said that victim impact statements do not affect the duration or disposition of the majority of their sentences. Instead, judges look to a defendant's criminal history, amenability to probation, and the severity of the offense, and in felony cases, to legislated sentencing guidelines. Most judges, however, were able to recall at least one case where victim input caused them to reject a plea agreement or to change the duration or disposition of the sentence either upward or downward.

*"The large majority of cases are negotiated, so the judge makes no decision, simply accepts or on rare occasions rejects a plea agreement. And in those cases, to a certain extent, this [presentation of the impact statement] is all a charade." Judge*

*"I have had cases where I was planning to honor a plea agreement and then after victim impact I rejected it. That is not typical. It's unusual, but it has happened." Judge*

The advocates interviewed make victims aware that judges typically place less emphasis on impact statements than other factors in sentencing, especially since victim input usually occurs after the decision has been rendered. Instead, they let victims know that the power really is just in the victim being able to stand up and say, "You did this to me. It was wrong. This is how it affected me. And this is what I think should happen to you for doing that to me."

*"One of the things that people will say to me is, 'Is it going to make a difference [in terms of sentence duration and disposition]?' and my honest answer is 'Probably not.'"*

*Victim advocate*

Judges do find that victim impact statements at times influence the conditions they attach to sentences, particularly in domestic violence cases, by providing important information about whether the victim will try to continue the relationship with the defendant as well as her wishes regarding treatment requirements and no-contact orders. As one judge stated, "If the sentencing guidelines call for a probationary sentence, then whatever probationary conditions are imposed could be impacted by what the victim states, especially in regards to no-contact orders." Another judge said that victim input is important because it helps her to see whether the victim is comfortable with the terms of the sentence.

The timing of the victim impact statement can be important, too. Judges mentioned that they prefer to receive an impact statement in writing before the actual sentencing hearing so that they can give more careful consideration to the victim's requests.

Several judges spoke about being "sort of insulated and numb in a sense" from handling so many serious cases, "so removed from crime for the most part" in their own personal lives, and working in a legal tradition that tends "to strip away emotions" to such a degree that the court becomes "a factory of sorts where we are just grinding these cases out." Judges thus recognize and advocates stress the educational role of victim impact statements for every person in the courtroom. As one advocate stated, instead of viewing the victim as "a case, they are going to see a human being. They are going to go, 'Wow, I cannot imagine what that would be like if it happened to me.'"

That educational role extends to the defendant as well. Judges and advo-

cates alike felt that victim impact statements serve an important purpose in raising the defendant's consciousness about his crime. Many judges carefully watch defendants' reactions to impact statements as a "barometer" indicating whether they are going to be successful on probation. One judge even stated, "If he owns what he did, apologizes, shows some remorse, I am encouraged by that and it might be reflected in the sentence. On the other hand, if it's [the victim impact statement] entirely ignored, or no comment on it, it will go the other way."

Finally, judges and advocates both see how presenting an impact statement can be empowering and an integral "part of the healing process" for many victims. Advocates emphasize that the impact statement is the victim's best opportunity to be "fully, independently heard." She can let the court and defendant know that, to quote one advocate, "This is me. I am still trucking. I am still surviving here, and I want everyone to know that what he said ... it isn't true." Many judges described this input as "cathartic" for victims, giving them "an opportunity to put closure on that stage of their life."

### Motivation or reluctance to give a victim impact statement

Many variables factor into a victim's decision to attend the sentencing hearing for her assailant and present an impact statement. Despite the difficulty, especially for domestic violence and sexual assault victims, advocates state that many still elect to do so. Certainly, some victims hope to increase the duration or disposition of the sentence even after advocates have explained that this is unlikely. More, however, simply want "to be heard about all the different ways this [crime] affected their lives," as one advocate relayed.

Fear of the defendant, so common in domestic violence cases, can influence a victim's participation at all stages of the criminal process. Advocates note that when a victim chooses not to attend a sentencing, it is usually

because she either fears the defendant or feels pressured by him. They therefore emphasize to victims that their attendance is voluntary.

**"I try to explain to them that they don't have to do it [attend the sentencing] if they don't want to ... I don't want them to be more victimized by this process, so I explain to them that 'it's your choice.'" Victim advocate**

Judges understand this reluctance to participate and recognize how intimidating it can be for any victim to present an impact statement in open court. Many spoke of how they admire those victims who do have the courage to give a statement and value the opportunity to "see a case [come] together." One judge wants the domestic violence victim to clearly express her desire for no contact in her impact statement so that he can hammer that point home to the defendant. Other judges proceed more cautiously with domestic violence cases and are careful to stress that the sentence comes from the judge, not the victim.

**"If she is really the victim of ongoing abuse, I think that standing up in the courtroom puts her in harm's way." Judge**

What may be harder to understand or simply accept for judges is why domestic violence victims are sometimes motivated to recant prior statements, request that no-contact orders be lifted, and/or ask for leniency for the defendant in their impact statements. As one judge said, "We cannot figure those [domestic violence] cases out. In those, you know that the victim has lied on one or the other of the occasions, said this to the police and is saying this now." Advocates acknowledge that with recantation—described as a "system failure" by one—comes the need for additional communication with the victim to find out why she is recanting and additional education for the system regarding her concerns. Some judges do grasp why a victim might recant or

even want the relationship to continue, albeit without the abuse, but feel challenged about what they can do from the bench to stop the cycle of violence.

Judges and advocates cite a related reason why victims might be reluctant to give an impact statement: their perception that the system is indifferent. As one judge said, victims might not "feel that the system really cares about them" or that "they are going to have any impact." An advocate expressed this similarly, "A lot of people feel like it's useless. Everything is already preordained and 'Why would I spend my time coming in? No one is going to listen or care.'" Advocates note that judges who listen intently to and thank the victim who gives an impact statement can do a lot to change this perception, even if the terms of the sentence or plea negotiation are not affected.

### **Features of a persuasive victim impact statement**

To call a victim impact statement "persuasive" is to say that it comes near attaining its desired result, be it a severe sentence, leniency, or something else. As noted above, victim impact statements frequently do affect the conditions of a sentence and less frequently plea negotiations and sentence length and disposition. Overall, judges and advocates agree and court observations confirm that to be persuasive, the tone and delivery of the impact statement must balance emotion, insight, and objectivity.

In terms of content, the persuasive statement displays an understanding of the judicial system, distinguishes the crime as out of the ordinary, offers new information or insight about the case or the victim's relationship with the defendant, reflects on what is best for society, and includes a level of compassion. A judge who sentenced a defendant for a series of rapes, for example, commented how persuaded he was when one of the victims was able to transcend how the crime had affected

her personally to think about "Where does this [sentence] fit for women, and where does this fit for citizenry and the safety of people in the streets?."

Because writing an impact statement is easier said than done, both system and community advocates have developed a set of guidelines for victims and work closely with them to construct statements that victims feel comfortable with and that advocates feel will be well received by the court. Advocates know that the "'lock them up and throw away the key' stuff" tends not to go over well in court, and so if victims want to include recommendations for sentencing in their impact statements, they help them to create a balanced statement.

**"I think an impact statement that speaks to the victim's wish to have the defendant get help, versus endless incarceration or worse, can be very impactful." Victim advocate**

Advocates note that delivering the impact statement can be a very difficult task. On the one hand, impact statements "that are probably the most compelling and the most powerful are the ones where people are really willing to open up and really talk about their pain." On the other hand, "the more sensible you come across, the more seriously you are taken."

The standard for a persuasive impact statement is therefore very high. As with any other thing, some victims are more skillful at composing and narrating impact statements than others. Non-native English speakers, those with limited formal education, and those who are developmentally disabled may find these tasks particularly challenging.

### **Judicial demeanor and dynamics in the courtroom**

To reap the benefits of victim impact statements at sentencing and to motivate victims to exercise their right, victims must feel relatively safe and

comfortable in the confines of the court room. While advocates play an important supportive and educational role in this regard, judicial demeanor and courtroom dynamics do as well.

Some judges are unsettled by the emotions brought into the courtroom by victims. They may worry about keeping order, being appropriately sensitive to all parties, and maintaining their own emotional distance and neutrality. Nonetheless, many see the value of the victim's input as worth the added work and discomfort and have found ways to handle their own emotions and to separate what they are feeling from the sentence itself.

Most judges have developed verbal and nonverbal techniques to maintain authority in the courtroom but ease tension during the presentation of an impact statement. These include maintaining eye contact with the victim, demonstrating active listening, insisting that the defendant listen to the victim, and thanking and complimenting her for her courage in coming to court. What can be most validating is when the judge says things to the defendant that the victim has said or would like to be able to say herself.

**"Judges have a lot to say at sentencing hearings to the defendant, and depending on how moved they have been by what this person did, sometimes they say what the victim would like to say themselves but can't, things like, 'It's hard, you know, I can't believe how much damage you have caused here.'"**  
Victim advocate

When judges find themselves in the position of empathizing with the victim impact statement while knowing that the sentence will be based on other factors, they have learned to take the time to carefully explain how and why they reached that decision. Such efforts go a long way towards making victims feel that they have been heard and that their participation has been worthwhile.

They also go a long way towards helping

victims in the healing process. Judges hold such authority and power that their response to victims and their impact statements is keenly felt. One advocate said that a victim once told her the judge's positive words were "balm for her soul." This effect is not lost on judges. One judge described how he used the "power of his pulpit" in many cases, giving the example of a sexual assault case where he said to the 14-year-old victim, "You are a courageous young woman, and you are a strong young woman, and I want you to know that this is not your fault."

### Conclusion

In this study, WATCH was pleased to see how sensitive judges and advocates were to domestic violence and sexual assault victims who provided input and impact statements in cases against their assailants. In a legal process that stresses reason and judicial neutrality and gives more weight to so-called "objective" factors in plea bargains and sentencing decisions, such expressions of emotion may seem alien and confounding.

For a copy of the complete report, visit [www.watchmn.org](http://www.watchmn.org).

## Victim Impact Study Recommendations

Based on the interviews and observations in this study, WATCH recommends the following:

- Advocates and prosecutors should continue to explain to victims the purpose and nature of plea negotiations so that their expectations regarding the effect of their input and impact statements are realistic.
- Prosecutors and advocates should solicit victim participation for the pre-sentence investigation, and impact statements should be submitted well in advance of sentencing.
- Advocates should continue to work with victims to help them to achieve a balance of emotion, reason, and insight in their impact statements.
- More conversation among judges, advocates, and prosecutors is needed to clarify why domestic violence victims sometimes recant, ask to have no-contact orders lifted, and/or plead for mercy for defendants.
- Judges should explain how they reached a sentencing decision or why they accepted a plea agreement to help victims to understand the reasoning behind their decisions and ultimately to heal.
- Judges should thank victims who give impact statements for coming forward, and if they are comfortable, to compliment victims on their courage in doing so. They should also consider mentioning key points from the impact statement when handing down the sentence.



## Victim Impact Study Quotes

*The researchers spent many hours interviewing judges and advocates. The following comments reflect the multi-faceted views they hold of the purpose and effect victim impact statements can serve. We have included additional quotes from the study on this page to demonstrate the range of sentiment and opinion the researchers found.*

And people come and they think the courtroom is going to be a therapeutic place, and it's the exact opposite of anything like that. It's not going to bring them peace or comfort.

Fourth Judicial District Judge

But recognizing the closure aspect of it [the victim impact statement] for victims I think is important. I do. So I have kind of come full circle with it; I think it's a good thing.

Fourth Judicial District Judge

Victims really appreciate it if the judge acknowledges that it was difficult to say what they say, that they were glad that they survived. "I am glad that you are here today" doesn't just mean "I am glad that you are here today"; it means that you are glad that you are breathing and that you are upright.

Victim advocate

A lot of people won't come to pre-trials, because even if they are there to say, "I want him hung by his nails," a defendant often will look at that as "Oh, she loves me. She is here. And she is only saying that because that advocate makes her." We make them say that, according to the defendants.

Victim advocate

I think that the judges understand maybe why victims recant or why victims go back to their partners, but it sometimes makes their job more difficult.

Victim advocate

So by her being very verbal, and she did a great job, but it backfired. It made them think that she was psychologically unstable because she elaborated about how stressful it was and that she had PTSD and this happened and that. And they just saw her as someone who just needed something the court couldn't give.

Victim advocate

If the sentencing guidelines call for a probationary sentence, then whatever probationary conditions are imposed could be impacted by what the victim states, especially in regards to no-contact orders. Anger management, chemical dependency issues--you sort of need that information from the victim because they are the ones who know.

Fourth Judicial District Judge

I think that any time a judge can relate to the victim, you know if there is someone who looks like them or comes from where they are that has a huge impact on them. It maybe shouldn't but it does. It really does. Because I think that it shows that all of us are vulnerable to these things, and I think that when people articulate how normal their life was and that they were just an average person going about their day, you know, responsible citizen and that something like this happens, I think that's pretty illuminating for a judge. It's not like they caused any of this. And I don't think that a lot of judges victim-blame anyway, but I think that it changes things in their minds.

Victim advocate

Reluctance is more fear...

Victim advocate

So when you get to the impact statements, even the ones that are particularly moving and heartfelt and emotional, they aren't really telling a judge anything he didn't know or already assume. In addition to which you have to be careful. Sympathy for the victim is not a legitimate function for the judge.

Fourth Judicial District Judge

It's empowering; it's a chance to finally say what you want to say as opposed to answering questions that other people ask you; it's a time to talk about the personal toll that the process has taken on you. And so I think it's important for people to do it if they feel like they can. I think it's important for the defendants to hear in personal terms about the pain that they have caused.

Fourth Judicial District Judge

I think most judges want to do the right thing, and if they can hear in an impact statement that they are going to make a difference by what they do, I think that that matters to them.

Victim advocate

# Case Summaries

## **Clemmie Howard Tucker, Jr.**

Clemmie Howard Tucker, Jr., 33, was charged with the second degree murder of Angelina Garley, 27. Garley, believed to have been one of Tucker's girlfriends, was found in the driver's seat of her car with a gunshot wound to the chest. Neighbors had called the police after hearing gunfire, but by the time they arrived, Tucker had fled the scene.

Tucker, a bouncer/security guard at the 200 Club, had a permit to carry a firearm and carried a gun whenever he worked. According to the criminal complaint, on the night of the murder, Tucker told his father, a retired police officer, that he was in trouble. His father replied, "I don't want to know anything about it. Call your attorney." Tucker's father then gave him and another of his girlfriends a ride to St. Louis Park.

Tucker turned himself in eight days later and ultimately pleaded guilty to the murder charge. Judge Kathryn Quaintance sentenced him to 225 months, with 150 months to be served in prison and 75 months on supervised release. He was given credit for 264 days and ordered to pay \$8,300 in restitution for the counseling of the victim's two surviving children and for the victim's funeral expenses. Amy Sweazy was the prosecutor and John Leung the defense attorney.

## **Jorge Daniel Morales-Mulato**

Jorge Daniel Morales-Mulato, 34, was charged with two counts of first degree criminal sexual conduct for assaulting his girlfriend's 11-year-old daughter. Morales-Mulato had been dating the victim's mother for a year-and-a-half when the victim told her mother about the abuse. The victim said the abuse began when she was 10-years-old and continued for nine months. Morales-Mulato initially admitted to the victim's mother and to police that he had assaulted the child and begged the mother for her forgiveness, but pleaded

not guilty at arraignment and requested a jury trial.

Morales-Mulato was found guilty of two counts of first degree criminal sexual conduct at trial and was sentenced by Judge Robert Blaeser to 216 months in prison with credit for 246 days, an upward departure from the sentencing guidelines. Judge Blaeser also ordered him to register as a sex offender. Theresa Froehle was the prosecuting attorney and Somah Yarney the defense attorney.

## **Elisa Elaine Hillman**

Elisa Elaine Hillman, 28, was charged with one count of terroristic threats and one count of malicious punishment of a child. According to the criminal complaint, Hillman's two minor children called a family friend stating that their mother was intoxicated and had been hitting them repeatedly with a cord. The friend went to Hillman's home to intervene and, though threatened, was able to get the children out safely.

Hillman pleaded guilty to two counts of malicious punishment of a child; the terroristic threat charge was dismissed. Judge Warren Sagstuen sentenced her to 365 days in the workhouse, 275 of which were stayed for two years, with credit for 45 days. She was also ordered to write a letter of apology to her friend. Anita Jehl was the prosecuting attorney and Demetrius Clemons the defense attorney.

## **Bernard Tuda Obondo**

Bernard Tuda Obondo, 26, was charged with first degree murder in the death of his wife, Crystal Halloran, 23. According to Obondo's statement, on the night of the murder he had an argument with his wife in which he accused her of cheating on him. She refused to answer his questions and went to bed. Obondo said that he watched the news, went for a short drive, watched more TV, and

fell asleep in the living room. When he awoke, he was still upset. He went to the bathroom, retrieved a hammer, and attacked his wife while she slept. She escaped briefly into the hallway of the apartment building, but he forced her back into the apartment, where he cornered her in the bathroom, stabbed her, and strangled her. Obondo changed his clothes, called 911, and attempted to leave the building, but was apprehended by the police.

Obondo pleaded guilty to second degree murder. The WATCH monitor who attended the sentencing hearing heard the victim's mother and stepfather read victim impact statements. They shared fond memories of the victim as a child and talked about how they had been enjoying a new stage in their relationship with her as she entered adulthood. Their statements also discussed the effect the victim's murder has had on her two younger brothers: one no longer expresses any joy and is failing in school and the other, who had developed a good relationship with Obondo, is now fearful and confused.

Judge Harry Crump sentenced Obondo to 450 months, 300 to be served in prison and 150 on supervised probation, an upward departure from the sentencing guidelines. He was given credit for 209 days and was ordered to pay over \$8,000 in restitution for ongoing counseling for the victim's family. Martha Holton-Dimick was the prosecutor and Rene Clemenson the defense attorney.

courtroom, personnel are always under the public eye.

#### Demeanor Recommendations

Monitor comments related to judicial and staff demeanor during this study were generally very positive and we saw many examples of exceptional service by court personnel. We are concerned about the impact of court personnel discussing personnel issues or airing personal grievances within hearing range of the gallery. We would recommend that those comments not be made in the presence of the public. Audibility announcements should be made periodically throughout the morning as new people arrive in the gallery. Announcements should specifically ask the attorneys to keep their voices down and to move into the hallway when speaking with clients and other court personnel.

WATCH also paid particular attention to no contact order violations in court and the system's response. Violations that were ignored or tolerated were especially concerning since the message victims and defendants take away is that the system will not enforce such orders outside the courthouse if it doesn't even enforce them inside. WATCH monitors were aware of the following no contact order violations in court, although others likely went undetected in the gallery or outside the courtroom doors.

*An in-custody defendant made a pointed gesture towards the victim in the gallery demanding that she stand up.*

*An in-custody defendant made three or four gestures to the victim in the gallery before the prosecutor and the victim advocate told him he couldn't make contact with the victim in the courtroom.*

*An in-custody defendant repeatedly mouthed something to and glared at the victim in the gallery; no court personnel said anything to him.*

*A defendant was handcuffed in the entryway after he and the victim had an argument before court.*

These examples illustrate the pressing need for greater consistency in the court's explanation of no contact orders and its response to their violations. Last spring, the Domestic Violence Court Steering Committee began addressing these needs. One can understand the confusion a victim or defendant might feel regarding the scope of a no contact order in court. At the outset of the case, the defendant is told not to have contact with the victim. Then, the defendant receives a summons to appear in court, where the victim will also likely be present. Is the defendant in violation of the order under these circumstances? Technically, this proximity is a violation of the order. Generally, though, court personnel intervene if they witness the defendant and victim sitting together or talking.

WATCH recommends that all court personnel remain vigilant to no contact order violations in the courtroom and identify ways, such as the following, to reduce them.

- ☐ When no contact orders are imposed, the judge should explain that court is a special circumstance in which the victim and defendant may be required to be in the same place, but are not allowed to arrive together, sit together, or talk to each other.
- ☐ Written information explaining this special circumstance should be included in any forms defendants and victims receive concerning pending court dates.
- ☐ Representatives of the court should announce as the proceedings get under way that no contact violations will not be tolerated in court and that violators may be subject to arrested or additional charges.
- ☐ Signs explaining that no contact

orders apply to the courthouse with the potential for arrest if the order is violated should be posted in plain view in the courtroom or the hallway.

#### **Conclusion**

WATCH is encouraged by the progress that the Hennepin County domestic violence court has made since 2001 and hopeful that the information and recommendations contained in its 2006 report will contribute to the court's further improvement. WATCH looks forward to continuing to advocate for change and invites all of those involved with the courts to join us in these efforts.

For a copy of the complete report, visit [www.watchmn.org](http://www.watchmn.org).

## WATCH

608 2nd Ave. S., # 465  
Minneapolis, MN 55402  
612-341-2747  
E-mail: [watch@watchmn.org](mailto:watch@watchmn.org)  
Web: [www.watchmn.org](http://www.watchmn.org)

### FORWARDING SERVICE

**Executive Director:** Marna Anderson

**Staff:**

Debra DeRosa, Administrative Assistant  
Dawn Dougherty, Court Monitoring  
Coordinator  
Shahidah Maayif, Volunteer Coordinator  
Donna McNamara, Development &  
Communications Director  
Heather Wolfgram, Court Monitoring  
Coordinator

**Founder:** Susan Lenfestey

**Board Chair:** Sara Mushlitz

**Board of Directors:** Beverly Balos, Ron  
Beining, Lisa Denzer, Lilliana Espondaburu,  
Diana Harvey, Jacquelyn Hauser, Susan  
Lenfestey, Harold Minor, Anita Patel,  
Joan C. Peterson, Peggy Pluimer, Glenda  
Dewberry Rooney, Romaine Scharlemann,  
Cindie Smart, Kate Troy, Claudia Velasco,  
Shelley Carthen Watson

Nonprofit US postage PAID Permit # 4920 Minneapolis, MN
---

## Volunteer Notes

□ In felony arraignment court, a defendant needed an interpreter but none was available. The defendant's cousin was asked to interpret for him instead.

□ At the sentencing, the victim was telling her advocate that she felt the police blamed her for the sexual assault, telling her she was "a white girl where she didn't belong" and deserved what she got from the African American defendant.

□ I've been volunteering with WATCH for two months, and in every hearing I've attended the defendant has been African-American. I've seen three trials of African American defendants and none of the jury members has been African American.

□ The judge hearing orders for protection today prioritized father's rights. In one instance, even when the respondent-father did not appear, the judge explained to the petitioner how the father could establish paternity. Finally, the petitioner told the judge that it wasn't her responsibility and the respondent would have to take care of it if he wanted to.

□ This was the first time I've seen a respondent in an order for protection hearing agree to the abuse allegations and agree to the order. He also said he was "going to take responsibility" for his actions and agreed the petitioner should have full physical and legal custody, saying that the kids would be better off with their mother.

□ A pregnant victim and her nine-month-old son were in domestic violence court. When the infant became fussy, she took him into the enclosed entryway so she could hear the cases being called without being disruptive. The boy fussed some more, so a deputy asked her to take him into the hallway. When the case she was there for was called, a probation officer offered to hold the child, even getting him to fall asleep while his mother attended the proceeding!