

WATCHing with a wider lens

by Susan Lenfestey

Recently I was talking to a friend about a WATCH report that documents, among other things, the hurdles facing a victim of domestic abuse if her children have been removed from her care and she is trying to get them back. "So you don't just sit in the back of the courtroom checking things off on a list," she said. It was the clichéd "aha!" moment when I realized that many people, even those who generously support WATCH, don't know very much about what WATCH actually does.

As one of the founders of WATCH, I can tell you that in our nascence we did indeed sit in the courtroom with a checklist and, well, watch. Did the hearing start on time? Did anyone tell the victim or family members why there was a delay and how long it would be? Did an emotionally charged sentencing get squeezed into a busy arraignment court? Was the defendant – or victim – one we had seen in the past? After one year we issued a report on what we, as outside observers, had noted and what we believed could be done more effectively. Some of the practices now taken for granted in the daily routine of the courts were enacted as a result of that simple first report.

From those first years of monitoring only in felony court we've come a long way. We now monitor regularly in misdemeanor domestic violence court and civil (order for protection) court. We are in the middle of a 21-month project monitoring misdemeanor domestic violence cases in three suburban courts and just completed a two-year project monitoring child protection cases in juvenile court. In addition, WATCH is

a national leader in court-monitoring, offering assistance and training – both on site and via webinars – to over 200 individuals each year. We host the National Association of Court Monitoring Programs, which includes member organizations from 21 states.

With the unabashed pride of a grandmother, (and fortunately for you, a word limit) here are just three examples of the sort of work WATCH now does.

- WATCH recently completed an intensive two-year monitoring and research project examining child protection cases in Hennepin County. In 27% of the cases, domestic violence was also present. As stated in the project report, "With little or no community support and in a relatively short period of time, women are expected to obtain stable housing, attend a multitude of support groups and parenting classes, and break ties with the father of their children if he is abusive. If their children have been removed from their care and they are unable to meet these standards set by child protection within the mandated time frame, they face the possibility of permanently losing their children."

While the mother faces losing her children for "failure to protect" them from domestic violence, often the abuser faces no charges at all. In addition, child protection workers WATCH interviewed said many women lose access to subsidized housing while their children are temporarily placed outside their home, causing problems later when they are expected to provide "stable housing" as part of their case plan.

WATCH is meeting with child protection workers and local and state housing and human services officials to better understand what is happening and develop recommendations to minimize this practice. The full report of our child protection study may be viewed at www.watchmn.org/reports.

- WATCH received government funding (a state grant consisting of federal Violence Against Women Act funds) to undertake a study of how cases of misdemeanor domestic violence are handled in the suburban courts. For years WATCH didn't have the resources to cover the logistical complexity and sheer volume of these cases, yet studies show that it's at the misdemeanor level that firm intervention in domestic violence cases is most effective. Among the findings thus far is that more than a third of domestic violence defendants in the suburban courts are placed on 'Probation to the Court'. Probation to the court means a defendant is under formal jurisdiction of the court, but not under the direct supervision of a probation officer. Without direct supervision there is no way of knowing if the defendant is complying with any court-ordered conditions (such as treatment programs) or if they're working. Furthermore, the victim, who may fear for her safety, has no probation officer to contact if the defendant fails to meet the conditions. This approach works in defendants' favor, but puts many victims at risk.

- WATCH is a member of the Coalition for Impartial Justice, whose goal is to protect Minnesota from big-money

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Case Summaries

NK Xiong

Twelve years ago, Hennepin County Child Protection Services made a finding of child maltreatment against NK Xiong and his wife after documenting that Xiong was sexually abusing their daughter. The victim was later placed in long-term foster care, but no criminal charges were filed. At the time the child protection case was closed, five other children were still living in the home with their parents.

In November 2009, a teacher reported suspected child sexual abuse involving another daughter to Hennepin County child protection. When interviewed, the victim reported that the sexual abuse had been going on for nearly nine years. She also said she had told her older sister, the first victim, about the abuse the previous year, but was afraid to tell her mother for fear she would be removed from her home. In January 2010, legal custody of the victim was transferred to a relative, and the child protection case was closed.

A criminal investigation into the alleged child sexual abuse of the second daughter resulted in two counts of felony second-degree criminal sexual conduct against Xiong, and on May 14, 2010, he pleaded guilty to both counts. Judge Robert Small sentenced him to concurrent prison terms of 48 months, stayed, and placed him on supervised probation for seven years. He was ordered to serve 35 days in the workhouse with credit for 35 days served. His extensive probation conditions include: have no contact with the victim or females under the age of 18, no alcohol or controlled substance use, register as a predatory offender, and supply a DNA sample. Michael Burns was the prosecutor, and Evan Rosen was the defense attorney.

Prodochee NMN Williams and Vanbuechey NMN Bailey

Prodochee Williams, 35, and his brother, Vanbuechey Bailey, 33, were both charged with felony first-degree criminal sexual conduct for assaulting their teen-aged half-sister. The victim told investigators that Williams had been having sexual contact with her for several months. According to the criminal complaint, when the victim went to Bailey for advice about what Williams was doing to her, Bailey told her, "it was better to have sex with her brothers than with other men," and also began sexually abusing her. The victim became pregnant, and DNA testing identified Bailey as the father.

Judge Warren Sagstuen dismissed the charges against Williams after his defense attorney, Scott Holdahl, argued at a pre-trial hearing that the term "half-siblings" is not included in Minnesota's statutory definition of a "significant relationship." Minnesota Statutes §609.341, subd. 15(2) states "significant relationship" means any of the following persons related to the complainant by blood, marriage, or adoption: brother, sister, stepbrother, stepsister, first cousin, aunt, uncle, nephew, niece, grandparent, great-grandparent, great-uncle, great-aunt. The state appealed the ruling, and the Minnesota Court

of Appeals ruled that the term "brother" in this statute includes half-brother, reversing Judge Sagstuen's dismissal of the case.

During the investigation of his first case, Williams was charged with a second case of felony first-degree criminal sexual conduct for assaulting the daughter of Bailey's girlfriend, with whom both brothers were living. Despite an interview at CornerHouse Interagency Child Abuse Evaluation and Training Center, where the girl described Williams's sexual abuse, the case was dismissed. Judith Hawley was the prosecutor, and Scott Holdahl was the defense attorney.

In the first case, Williams pleaded guilty to an amended charge of felony third-degree criminal sexual conduct. Judge Sagstuen sentenced him to 38 months in prison with credit for 618 days served, an upward departure from the sentencing guidelines due to the victim's vulnerability and the ongoing nature of the abuse. Williams was released on June 21, 2010, and is currently on parole. Judith Hawley was the prosecutor, and Scott Holdahl was the defense attorney.

During the same period, Bailey was charged with a second count of felony first-degree criminal sexual conduct for assaulting his girlfriend's other daughter. The victim stated the sexual abuse had been going on for more than three years and that Bailey had threatened to kill her if she told anyone about it. The victim became pregnant and after the birth of her child, DNA testing identified Bailey as the father.

Bailey pleaded guilty to felony first-degree criminal sexual conduct in both of his cases. Judge Mark Wernick sentenced him to concurrent prison terms of 210 months and 144 months with credit for 636 days served. Bailey will be eligible for release with the following conditions after serving 10 years: supply a DNA sample and register as a predatory offender. Julie Allyn was the prosecutor, and John Ryan was the defense attorney.

WATCHing with a wider lens

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special interest judicial elections by passing a law that changes how state court judges are selected. The bill did not make it through the last legislative session, but CIJ is working to increase its outreach and develop strategies for passage of the bill next year. Marna Anderson, WATCH executive director, has been asked to serve on the executive committee of CIJ which will provide leadership for this effort.

Thanks to your support, WATCH has grown tremendously since those days of checking a list in the back of the courtroom. While we now watch with a wider and more sophisticated lens, we haven't lost sight of our mission – to make the justice system more effective and responsive in handling cases of violence against women and children and to create a more informed and involved public.

Volunteer Notes

✓ In domestic violence court today, the prosecutor asked that bail be imposed, stating that the defendant had failed to appear for a previous hearing. Neither the judge nor either of the attorneys had the records documenting this, and when the defense attorney argued for the defendant to be released without bail, the judge agreed.

✓ A petitioner in a harassment restraining order (HRO) hearing was forced to listen to comments directed at her by the respondent when the judge gave him permission to make a statement. The petitioner had endured years of abuse and harassment during her previous marriage to the respondent and sought the current HRO when he began repeatedly calling her. In his comments, the respondent told her there would always be 'an affectionate spot for her in his heart' and that he was a 'completely different man.'

✓ Inefficiency was evident in the government center again today. I was assigned to monitor nine cases scheduled between two judges, but only four hearings actually occurred. It was also disheartening that of the four hearings on the record, three involved violations of court orders, including an order for protection violation, not attending a treatment program, and failing to register as a predatory offender.

✓ The deputy was playing solitaire on his cell phone throughout the entire order for protection hearing this morning.

✓ During a probation violation hearing for a third degree assault and domestic assault by strangulation case, the defense attorney was exceptionally organized and respectful. He represented his client effectively without minimizing the crime in any way.

✓ I was reminded again today of how hard it is for the families of victims and defendants to see court staff laughing

and joking around between hearings. I overheard the mother of a defendant whisper to her husband that she felt the court personnel were not respecting her family's dignity.

✓ One defendant in felony arraignment court today had not had the opportunity to speak to his attorney before his first appearance. Without consulting him, the public defender reserved the bail argument until the next appearance when he would have more information about the case. The judge then ordered bail at the amount requested by the prosecutor. The defendant could not afford to post that amount of bail, so would have to remain in custody until his next hearing in three weeks. This took him by surprise and he became visibly upset.

✓ When the judge in one of the suburban courts this morning ordered defendants in several domestic violence cases to have *no contact* with their victims as a condition of release, she did not give any examples to explain what this means nor did she discuss the consequences for violating the order.

✓ A defendant out in the lobby at one of the suburban courthouses was texting a woman in the courtroom. After a defense attorney told the deputies what was happening, they went out and took him into custody for violating his *no contact* order.

✓ Court was scheduled to start at 8:30 a.m. At 10:30, the judge had only spent 10 minutes on the bench, heard two cases, and provided no explanation as to what was going on.

✓ Since I began monitoring this court in September, I have seen all the attending deputies sleeping at some point!

✓ The judge was excellent in communicating with all parties. He spoke in a supportive manner when appropriate and directly, but calmly, handled a sarcastic, flippant defendant.

Volunteer with WATCH

Are you:

- looking for experience in the courtroom?
- passionate about eliminating violence against women and children?
- interested in promoting safety for women and children victims of violence?
- curious about how you can make a difference in the justice system?

Become a volunteer court monitor!

WATCH trains volunteers to observe court hearings and take note of how they are handled and their outcomes. Observations are used to recommend improvements to the justice system and to promote greater safety for victims of violence. Since court hearings take place during daytime hours, this is a great volunteer opportunity for students, retirees, or people with flexible work schedules.

The next volunteer training is September 11. For more information, to complete an application, or to schedule an interview, contact Anna at 612-341-2747 x7 or alight@watchmn.org, or go online to www.watchmn.org.

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Thumbs up/thumbs down

👍 Thumbs up to the U.S. Department of Justice for its April 2010 memorandum clarifying key criminal provisions of the federal Violence Against Women Act. The Act prohibits someone from crossing state, tribal, or territorial lines "with the intent to kill, injure, harass, or intimidate a spouse, intimate partner, or dating partner;" or using "force, coercion, duress or fraud" to require a spouse, intimate partner or dating partner to cross jurisdictional lines; and, during, as a result of, or to facilitate such conduct or travel, to "commit or attempt to commit a crime of violence against that *spouse, intimate partner, or dating partner.*" Similar provisions address inter-jurisdictional stalking and violation of a protection order. The department wrote that these provisions apply when the offender

and victim are the same sex, officially extending federal protection to gay and lesbian victims of domestic violence.

👎 Thumbs down to the U.S. Supreme Court for its questionable interpretation of the Second Amendment in a ruling that prioritizes individual gun ownership over public safety and opens the door to lawsuits challenging local and state gun control laws. In its 5-4 decision, the court ruled that state and local gun laws may not infringe upon an individual's right to own firearms. Particularly troubling is an announcement by the attorney for Gun Owners of America that they intend to use the new ruling to challenge firearm bans imposed on domestic violence offenders.

TRAINING

Join our August 19th webinar *Introduction to Court Monitoring*

- Learn the basic information you need to start a court monitoring program or short-term project.
- Know who to contact, how to get volunteers, and what things to look for.
- Gain access to WATCH forms and expertise along the way.

Visit our website, www.watchmn.org for more information.

WHAT'S NEW

Everyone at WATCH extends a warm congratulations to national project director Dawn Dougherty and her partner, Jen, on the arrival of their adopted son, Emmett Kevin, on June 25. Emmett celebrated his one-month birthday on July 2. Dawn is on short-term parental leave and will return to work in August.