

WATCHing out for judicial independence?

By Barbara L. Jones
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Judicial independence is not a mere election slogan but a core principle in American jurisprudence. Another core principle is that the system should be effective and responsive to the needs of crime victims, and another is that the constitutional rights of defendants must be protected.

A recent case illustrated what happens when those principles clash. Hennepin County District Court Judge Jack Nordby continued a sentencing of a defendant convicted of criminal sexual conduct in order to advise the defendant that he had been exposed to the efforts of WATCH.

According to its website, WATCH is a group that monitors trials in order to make the system more effective and responsive in handling cases of violence, particularly against women and children.

The defendant, Kris Hahn, presently is suing Nordby and others for deprivation of his civil rights. Hahn claims to be the victim of a civil rights conspiracy to deprive him of due process, equal protection and the effective assistance of counsel.

Nordby noted at Hahn's scheduled sentencing that WATCH monitors, carrying their signature red clipboards, were present during the trial and represented a "not very subtle threat to the judge — to me." Nordby said that the defendant could quite rationally view them as an effort to influence the proceedings against him, creating a biased court or one with the palpable appearance of bias.

"WATCH assumes that judges, or many of us, are hostile or indifferent to the suffering and safety of victims of domestic abuse, or ignorant of these evils. We are not, of course, but no matter. It has an unquestioned right to be present in courtrooms, to criticize us privately or publicly, to campaign against us, to seek our discipline or removal; but it has no right to influence our decisions by intimidation.

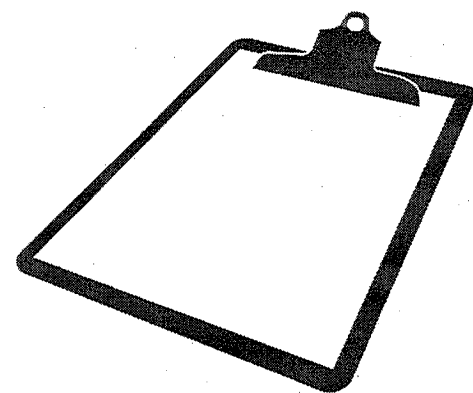
"Nor should any such effort be allowed to pass undisclosed to any litigant it may adversely affect, who has the right to explore its existence and its possible effect upon his rights," Nordby wrote.

The executive director of WATCH, Marna Anderson, said she found it appalling that a judge would use a criminal proceeding "to advance his own agenda." She also said that WATCH monitors a judge's demeanor, not his or her decisions.

Nordby said, "I know of no judges who have genuine respect or esteem for WATCH," but Anderson countered that is not true. Anderson also told Minnesota Lawyer that she did not believe that WATCH needed defending but that it has received support from many judges. She pointed out that in a 2007 survey of criminal justice system personnel, 31 out of 64 respondents stated that WATCH promotes accountability or makes the courtroom environment more professional. She also said that WATCH gives judges private reports on courtroom demeanor and many judges have accepted WATCH's offer to provide more information about the reports.

(See sidebar for comments by Hen-

WATCH



Bringing a public eye to justice

Judge says WATCH helps court fulfill its mission

Editor's note: Minnesota Lawyer asked Judge Margaret Daly for her thoughts on WATCH. Suffering from laryngitis, Daly replied in an e-mail.

I have been a judge since 2000 and was a District Court Referee for eight years before that. I was the Presiding Judge of our Criminal area within the last couple years and am currently the Assistant Presiding Judge of Criminal. I have interacted with WATCH as an individual judge and as part of my management responsibilities. My comments reflect those experiences.


WATCH provides a valuable perspective for judges, lawyers and court staff. Our courtrooms are open to the public but most citizens cannot spend time there. WATCH volunteers are able to observe a variety of court proceedings and their observations of and reactions to what we say and do very likely reflect how we are perceived by the participants and other persons in the courtroom. They also let us know how the courtroom atmosphere, to which we can become accustomed and of which we can therefore become less aware, may add to or detract from the dignity of the proceedings. While their focus primarily is on cases where women and children are identified as victims, they often comment as well on how defendants are treated and spoken to. They also have looked at the issue of timeli-

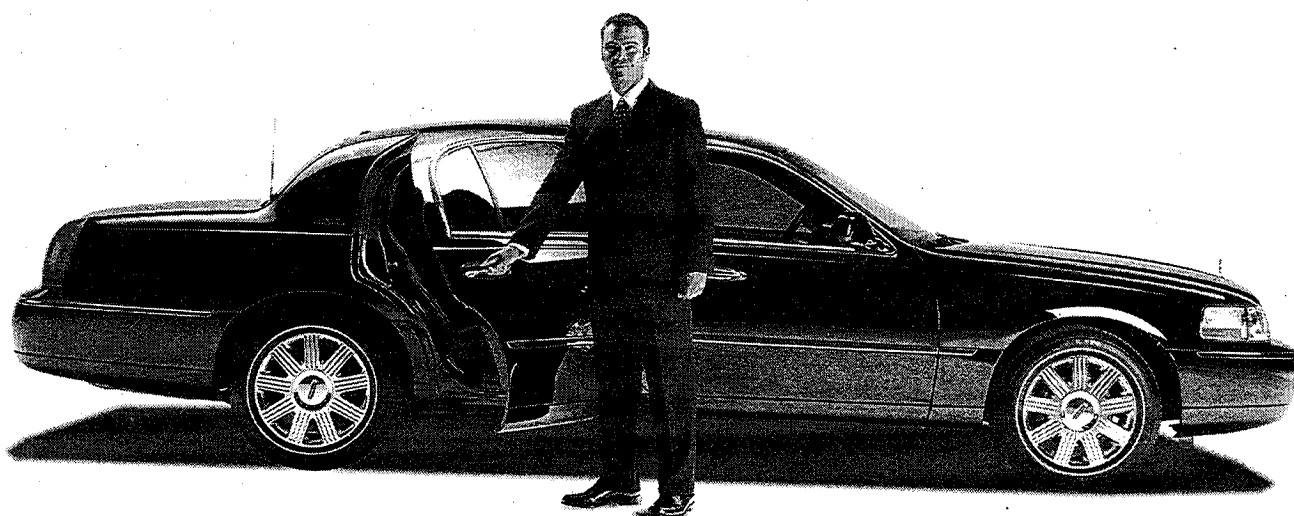
ness and how delays are communicated to those waiting in the courtroom, concerns which affect both defendants and victims, as well as their families.

Judges rarely see other judges in court. For judges with management responsibility that means that concerns about judicial or staff performance or the reputation of our system in general come to us through the feedback of attorneys, parties or observers like WATCH. While I have not agreed with WATCH on every issue they have discussed with me, I have most often found their observations worthy of consideration. They have been open to the bench's response, for example that a concern may be the result of a volunteer not understanding a substantive area of the law or a court rule. Of course it would not be very effective for a court WATCH organization to be overly deferential to the bench they are observing but in my experience WATCH has always communicated with us in a respectful and professional way. For the most part WATCH's comments are directed to improving the way judges and lawyers communicate, through words and demeanor, rather than on the substance of the decisions. This is consistent with our efforts to incorporate the results of studies which have shown that parties will accept an outcome or decision from a judge even if it is unfav-

orable to them, if they feel they have been listened to and treated fairly.

WATCH interacts with the bench in various ways. If they have a question or concern involving a particular judge they usually first try to speak privately and directly to that judge. They have also recently started a practice of regularly providing individual reports containing volunteer comments to judges on our bench. Many judges have signed up to receive those reports. They publish a newsletter in which they provide quotes from the volunteers. Those comments may be positive, as when a judge takes time to explain a decision, or may be negative. In general they do not name the judge who is the subject of the comments. WATCH has also worked with our bench on initiatives such as the Family Violence Coordinating Council and the Domestic Fatality Review Team, both multi-disciplinary groups working to improve the criminal justice system's response to family violence. The director, Marna Anderson, speaks to new judges as part of their training.

It is our mission as a court system to increase public trust and confidence in the courts. Overall WATCH has raised our self-awareness and our accountability, allowing us to better fulfill that mission. 



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WATCH says it doesn't try to influence decision-making

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nepin County District Court Judge Margaret Daly, who states that WATCH provides a valuable perspective for judges, lawyers and court staff.)

Anderson said the purpose of WATCH's red clipboards is to identify the monitors to the court and the public. "We were advised to go [to court] incognito but we don't want to 'get' judges," Anderson said.

Nordby told Minnesota Lawyer that his main complaint about WATCH is that it tries to manipulate judicial assignments, noting that at one point it asked the chief judge to remove him from the felony arraignment calendar because he was releasing defendants on bail. He was not removed then but was removed at a later date, he said.

Anderson said that WATCH does not attempt to influence judicial decision-making.

Although Anderson told Minnesota Lawyer that WATCH does not have a history of conflict with the bench similar to the concerns raised by Nordby, just weeks ago, WATCH severely criticized another Hennepin County judge. Last November, WATCH wrote to the Board on Judicial Standards to request

that Hennepin County District Court Judge Stephen Aldrich be removed from his seat after making remarks in a hearing to amend an order for protection brought by a woman against her husband. According to Anderson's letter, Aldrich said, "I've been married forty-five years. We've never considered divorce, a few times murder maybe." WATCH has made two prior complaints against Aldrich.

Because the matter is pending before the Board on Judicial Standards Aldrich declined to comment. However, Hennepin County Assistant Public Defender Cliff Poehler, who has in the past spoken at fundraisers for WATCH, wrote an open letter to the organization which he gave Minnesota Lawyer permission to quote. He noted that Aldrich has a long history of advocacy for families and children, and also that the woman at the OFP hearing said about Aldrich's comment, "I laughed, it broke tension, and it was the highlight of the hearing."

Poehler said, "WATCH sacrificed children, families, and a good judge on the altar of their ideological and stylistic preferences and on their staff's

appetite for power."

He called on WATCH to "reconsider and recalibrate its recent policies of public criticism and attempted intimidation of judges" in the interests of community support and judicial independence.

Hennepin County District County Judge Kevin Burke told Minnesota Lawyer that WATCH's reactions to events in court may be skewed by its mindset. He pointed out that in its current newsletter, posted on the Web, a court watcher wrote that a judge seemed to be inquiring about which judge would preside over the defendant's next appearance by asking, "Who is the black judge?" Burke said the judge must have said, "Who is the block judge?" When people are looking for comments at which to take offense, they will find them, he said.

Burke also agreed that WATCH needs to understand that its activity is designed to be intimidating and suggested that the organization pursue a "more unifying" approach. He emphasized that the issue is judicial independence.

"Protecting and preserving judicial

independence can be tricky particularly when you sympathize with the cause. That is in part why ... understanding the issue is helped if you substitute a cause you are not sympathetic to," Burke wrote in an e-mail to Minnesota Lawyer.

"Our nation has a pretty sorry history of the state courts standing up to confront segregation. Segregation was the law of the land at the time and there were groups then who monitored the courts to make sure segregation remained the law of the land. I don't know what [Judge Nordby] said but I suspect that what [he] said about WATCH is driven in part by his perception that WATCH represents a threat to judicial independence. That conclusion isn't totally unreasonable given the fact that WATCH doesn't disguise its goal of trying to influence judicial decisions. Over the years there have been instances when WATCH sent material ex parte to judges which put judges in difficult ethical positions. I don't think that those mistakes were malicious but they were mistakes," Burke wrote.

Employees who left job to pray denied unemployment comp

By Patrick Thornton
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Determining that employees at a

ment that would compel an average worker to quit.

The Court of Appeals, however, affirmed the unemployment judge's rul-

ment benefits and then said they didn't consult with each other, Nelson said.

"A lot of (the former employees) didn't pray when they contended it was

agreed to make further accommodations to the company's break schedule. The settlement added two 10-minute breaks that would allow more employ-