

WATCH Post

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Spring 2003

EVERYBODY'S ENTITLED TO MY OPINION

The Red Wave of WATCH

By Susan Lenfestey

Ten years ago last month, the first WATCH volunteers walked into the Hennepin County courts with our now-trademark red clipboards.

We thought we would create a red wave on behalf of women and children who historically have received short shrift from the criminal justice system. The stories, both anecdotal and documented, were abundant, and all of them carried a central theme: if a woman was assaulted, chances were good that she did something to provoke it (unless she was white and the alleged perpetrator wasn't). And she probably wasn't trustworthy. Less than fifty years ago, if you were raped in Manhattan, your assailant couldn't be charged with a felony unless there was an eyewitness. The reasoning was that a woman's word could not be trusted—and a man's reputation could be so easily harmed.

Although the Manhattan statutes had long been changed, and the Minnesota sentencing guidelines for sexual assault had just been ratcheted up, that residual distrust still lingered.

So behind our red wave was a sturdy mission: *to make the courts more effective and responsive in handling cases of violence, particularly against women and children, and to create a more informed and involved public.*

Over the decade, the red wave did not turn into a tsunami like we'd envisioned. Instead, it created a series of important

ripples. And I see now that ripples can become streams, which are nourishing, whereas a tsunami is just a destructive blow.

The WATCH ripples and streams are many. Over the years, hundreds of groups and individuals at home and abroad have sought our help and advice in forming a court watch program. The most recent of these is a WATCH-like group getting underway in Bulgaria under the leadership of a woman who volunteered with WATCH two years ago. Hundreds of others have purchased our start-up manual as a guide. Ten years ago, we weren't sure we could make the next payment on our copy machine much less foster such an amazing movement.

There are many reasons for our success, but in this newsletter I want to single out and salute two of them.

First, the members of the Hennepin County justice system, most of whom greeted us with an open mind and a willingness to work together. As a result, we've seen many innovative changes here—a Hennepin County Fatality Review Team, a designated domestic violence court, an open juvenile court in child protection cases, and vastly improved databases and communications—to name a few.

Minnesota and Hennepin County are nationally respected as progressive leaders in efforts to deal more effectively with crimes against women

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Thumbs up/ thumbs down

👍 Thumbs up to the **Minnesota Supreme Court** for its ruling in *State v. Traylor* affirming Judge Thor Anderson's earlier decision regarding the admissibility and reliability of evidence obtained from a state of the art (and widely accepted) form of DNA testing using PCR-STR typing. Many people's lives—victims' and defendants' alike—were put on hold as this and an accompanying case, *State v. Kromah et al.*, moved through the appellate courts. WATCH is relieved that the backlog of DNA cases can now proceed. *Thumbnote:* As these cases were being appealed, the Ramsey County Attorney's Office, as part of its innovative post-conviction DNA testing program, relied on this same PCR-STR typing to exonerate a man wrongfully convicted of a 1985 rape.

👍 Thumbs up to **U.S. Representative Betty McCollum (D-MN)** for introducing a resolution unanimously passed by the U.S. House of Representatives last month condemning the brutal sentence of death by stoning (whose most frequent victims are women) as a gross violation of international human rights. Rep. McCollum introduced this

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Thank you to our generous donors

The mission of WATCH is to make the justice system more effective and responsive in handling cases of violence, particularly against women and children, and to create a more informed and involved public.

April has been proclaimed . . .

By Suzanne Elwell

For every issue, there is a day, week, or month designated as a time to highlight, honor, recognize, commemorate, and/or celebrate that issue. From Math Awareness Month to National Library Week, April has numerous distinctions. And for WATCH, April is an especially busy month.

In case you didn't know, April is **Sexual Assault Awareness Month** and **National Child Abuse Prevention Month**.

WATCH seeks to do double duty with one event by sponsoring a special panel presentation to highlight the critical issue of the sexual exploitation of children: *An Overview of Juvenile Prostitution in Minnesota* on April 11th. The presenters, who come from law enforcement and the Hennepin County Attorney's Office, will discuss the history and growth of juvenile prostitution in Minnesota, urban street level investigation, coordination of statewide efforts at case investigation, felony prosecution or promotion of

prostitution cases, and services available to victims.

April boasts another special recognition event close to our heart and mission—**National Crime Victims' Rights Week**, which is April 6th through 12th. The National Center for Victims of Crime encourages us to envision a more comprehensive and compassionate response to victims by embracing the concept of *parallel justice*. Tremendous resources are spent responding to crimes and apprehending, prosecuting, and incarcerating the offender. With parallel justice, there would always be a second—*parallel*—set of responses designed to help ensure a victim's safety, to help a victim recover from the trauma of the crime, and to provide resources to help a victim get his or her life back on track. As WATCH knows, it takes more than permitting a victim to give an impact statement to acknowledge the harm done by crime and to help victims rebuild their lives.

During April, we are also pleased to take

a week to focus on the backbone of our organization, our volunteers. April 27th through May 3rd is **National Volunteer Recognition Week**. In our view, the loyal, hardworking volunteers of WATCH and other organizations deserve a whole month of accolades and appreciation, but we will try our best to pack our overwhelming admiration and gratitude into seven short days, and continue to show our appreciation throughout the year.

Despite having to share April recognition time with agricultural products, obscure hobbies, and other meritorious (and a few dubious) issues, I am a firm believer in designating a month to focus attention on a particular issue—to educate the public, increase awareness, and advocate for positive change. We hope you take the time to turn your heart and your attention, even for a moment, to these critical issues that affect your families, your neighbors, and your community. ♦

For more information on "parallel justice," see www.ncvc.org.

You don't see this everyday . . .

Two patterned sex offenders make their way to prison

WATCH noted two significant outcomes last month with the sentencing of two separate defendants as patterned sex offenders. Not only were they ultimately convicted of the underlying criminal sexual conduct charges, they were sentenced under the state "patterned sex offender" statute that provides for enhanced sentences beyond the state sentencing guidelines. For these defendants, that means that their sentences can be described in terms of decades as opposed to just days, months, or years.

Dennis L. Whitley, Jr., a level 3 sex offender with a long history of sexual assaults involving nine prior victims, was barely off parole when he assaulted a

woman who was jogging across the Stone Arch Bridge in Minneapolis. He was convicted of fourth degree criminal sexual conduct and failure to register as a predatory offender and received a sentence of 40 years, the statutory maximum under the patterned sex offender statute.

Willie Greer has spent most of his adult life incarcerated, with offenses ranging from kidnapping and robbery to domestic assault and criminal sexual conduct. During the brief periods when he was out, he was sexually assaulting or attempting to assault children; two current and at least three past victims were identified during the course of the latest case. Greer was convicted of

fourth degree criminal sexual conduct and sentenced under the patterned sex offender statute to 20 years.

The patterned sex offender statute, Minnesota Statute 609.108, addresses those offenders who pose a continuing danger to public safety and provides that the sentence should be at least double the sentencing guidelines for the current offense, but not more than the statutory maximum.

The court *must* consider sentencing under the patterned sex offender law whenever an offender is convicted of criminal sexual conduct in the first or second degree. However, sentences of this kind are rare. In 2001, only six such adjudications occurred in the entire state, and, at least in WATCH's experience, it's definitely not something you see everyday. ♦

EVERYBODY'S ENTITLED TO MY OPINION, CONTINUED

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and children, and it is a well-deserved reputation.

As Dr. Martin Luther King, Jr. once said, "We aren't where we want to be and we aren't where we're going to be, but thank god we aren't where we were."

Second, the vitality of our volunteers. In ten years, WATCH has trained over 400 court monitors. They have patiently watched and taken notes on over 40,000 appearances, not all of them the high-action stuff of TV courtroom drama. Other less-visible volunteers and interns work in the office, helping with research, data collection, and the critical day-to-day tasks that keep the organization running.

They all see firsthand the difficulty of applying the hard edge of the law to the blurred reality of human failure.

They may come in with simple red clipboards, but they leave with a complex set of gray issues.

I doubt there is one WATCH volunteer who doesn't shudder at the harsh imbalance of California's recently upheld three-strikes legislation, or the unconscionable racial tilt still undeniable in American justice, perhaps nowhere more clearly than on Texas' death row.

WATCH has earned much of its credibility on the shoulders of these extraordinary women and men. They also play a huge role in creating a more informed public by talking to their families and friends about what they've observed. That is one huge ripple that none of us had foreseen.

These are difficult times for our nation, and side-stepping justice in the name of security is an alluring protective

measure. But a society can be measured in part by how it maintains its justice system, particularly during its most unstable and frightening times.

As Alexander Hamilton wrote during the turbulent early years of this nation, "The ordinary administration of criminal and civil justice contributes more than any other circumstance to impressing upon the minds of the people, affection, esteem, and reverence toward their government."

Okay, it's a little creaky as a sound byte, but as with many of the founding precepts of this nation, it still holds true.

So it's more crucial now than ever that we WATCH our justice system with a keen and inquiring eye, not only in the name of the victim who often cannot be heard, but in the name of democracy which cannot be guaranteed. At least in my opinion. ♦

ORDERS FOR PROTECTION

Barriers to limited English speakers seeking orders for protection

WATCH intern Amirthini Ambrose conducted a study for her senior project at the University of Minnesota to determine what, if any, obstacles immigrants and refugees face in seeking orders for protection (OFPs) in Hennepin County Family Court. She was particularly interested in how a petitioner's or respondent's proficiency in English might affect the court process.

Amirthini compiled observations of 65 randomly selected OFP proceedings over the course of several months, 15 of which involved interpreters. The majority of parties to the cases using interpreters were from the Somali, Latino, or Asian communities. She also interviewed advocates from domestic violence agencies in Hennepin County serving immigrants and refugees for their perspectives.

The results of this small-scale study were sometimes reassuring, but also revealed areas in need of improvement.

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On a positive note

The court monitors assisting in this project recorded no significant differences in judicial demeanor or treatment of parties during hearings based on the parties' level of English proficiency. Judges and referees seemed to be successful in maintaining pleasant, helpful, and controlled courtrooms. Court monitors overwhelmingly described judicial officials as "attentive," asking and responding to questions and often going out of their way to get information about county and community services for the parties.

Also, as required by state law (see Minnesota Statute § 546.43, subd. 1), interpreters were present for hearings in every case where they had been requested.

Room for improvement

A number of problems identified in this project applied to English speakers and non-English speakers alike. These included judges and referees failing to verbally notify the respondent of the

criminal consequences of violating an OFP and the lack of explanation of the OFP in the courtroom once it is granted.

Consequences of violating the OFP

In a significant number of cases observed, judges and referees did not tell respondents in the courtroom of the *criminal* consequences of violating the OFP. While this is a serious enough oversight for those cases involving U.S. citizens, it is particularly problematic for immigrants and refugees whose legal right to be in the country may be jeopardized if they are eventually charged and convicted of a crime.

Lack of explanation of the OFP

Most judges and referees seemed intent on making the proceedings less confusing to parties, and therefore it was puzzling why these efforts stopped short of reviewing the final order in court and answering any questions that might arise. Court monitors noted this lack of explanation in over half of the cases where an OFP was granted. In at least a

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BECKER DEPARTS

Dear *WATCH Post* readers, there's no way to break the news to you easily, so here goes: WATCH office manager par excellence Brad Becker hung up his red clipboard in mid-February to join the ranks of consultants at Weber Lundquist.

Brad worked at WATCH for over a year and a half. His dulcet voice greeted callers to the WATCH office, and if they were lucky enough to come in person, their moods were suddenly lifted by his contagious grin (so important after

monitoring the kinds of cases we do) and upbeat personality.

Brad is definitely one of the good guys, having worked on so-called "women's issues" off and on for almost 20 years. His database acumen, development wizardry, event planning mastery, but most of all his consideration, warmth, and good humor are deeply missed in the WATCH office. That being said, we wish Brad all the best in his new job. In the words of Elvis, Brad's all-time favorite crooner, *'til we meet you again, may God bless you. Adios. ♦*

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handful of cases with interpreters, the interpreter was not directed to wait along with the parties outside of the courtroom and was no longer available to them to translate the order, which is written in English. In such cases, parties may not even know whether an OFP has been granted or denied since some judges and referees render their decision only after the parties have left the courtroom.

Problems specific to parties with limited English proficiency include the occasional uneven quality of language interpretation, especially with languages for which court certification programs are nonexistent, and the questionable conduct of some of the interpreters.

Quality of language interpretation

While it was difficult for court monitors unfamiliar with the languages being interpreted to assess the quality of interpretation, at times it was apparent that an interpreter was deviating from his or her goal, which is “to produce a legal equivalent, a linguistically true and legally appropriate interpretation.” (Minnesota Supreme Court Interpreter Advisory Committee, *Best Practices Manual on Interpreters in the Minnesota State Court System*, May 1999, p. 9.) Court monitors observed several instances when interpreters carried on conversations with a party, none of which were translated for the judge or referee, directed questions to the parties that were not asked by the judge or referee, or translated significantly more than was actually said.

Questionable conduct

Amirthini’s interviews with domestic abuse advocates in Hennepin County pointed to another concern regarding improper interpreter conduct, such as interpreters trying to get petitioners to drop OFPs, incorrect translation resulting in a denial of the OFP, or disclosure of case information to the community to which the petitioner belongs. Although not knowingly observed by the monitors in this project, this behavior constitutes serious

ethical violations and should receive swift and strong sanctions when reported.

Recommendations

Several of the issues raised through this project can be immediately addressed with very little investment; court resources may actually be saved in the end if compliance with OFPs is enhanced. It is thus recommended that in OFP proceedings, the consequences of violating an OFP and the parameters of the final OFP be explained in the courtroom by the presiding judge or referee. As is evident from a recent Hennepin County study (Hennepin County District Court Research Division, *Results of Survey of Domestic Violence Court Defendants: Understanding of Court Ordered Conditions*, October 2002), orders are best understood when the judicial official explains them *directly* to the concerned party.

Those who are aware of problems with the quality of the interpretation should contact the court scheduling office for follow up with the agencies providing the interpreter and should report questionable conduct on the part of an interpreter to the Minnesota Court Interpreter Program.

Other issues point to the need for increased funding to ensure that enough qualified interpreters are available to cover all the proceedings where they are needed. The Minnesota Supreme Court certifies court interpreters who have passed a rigorous language proficiency exam using legal terminology in English and Spanish, Russian, or Hmong. More such certification programs in other languages are needed.

As secondary migration from other states increases Minnesota’s population of immigrants and refugees, Hennepin County must continue to do its utmost to ensure that domestic violence victims from all communities have access to the OFP process; that the rights of parties regardless of language proficiency are respected in the proceedings; and that those unable to properly communicate their stories on their own in English are afforded this opportunity through securing the services of qualified interpreters. ♦

Thumbs up/thumbs down

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legislation in response to the case of a Nigerian woman sentenced to death by stoning after being convicted of adultery. Her sentence was overturned after a worldwide outcry, but another Nigerian woman awaits a similar sentence once she has weaned her baby in early 2004. Rep. McCollum stated, “I do not know the women who have been sentenced to death by stoning, and I will likely never visit their villages in Africa or the Middle East. But I will stand with them as my sisters, as fellow citizens of this world, and I will work to defend their rights and the most basic human rights we all deserve to enjoy.”

👍 The other thumb goes up to **Rep. McCollum** for her response to recent reports of ineffectual, nonexistent or bankrupt sexual assault and harassment investigations at U.S. military academies. (The U.S. Air Force Academy has the dubious distinction among the academies of punishing more victims than perpetrators in these cases!) Rep. McCollum expressed her extreme disappointment at the Department of Defense for failing to protect cadets from sexual misconduct and for failing to provide a venue for victims of such crimes to come forward. She has publicly called upon the House Armed Services Committee to convene a series of panels to address recommendations for *real* change in this area.

👍 Thumbs up to the **Hennepin County Public Defender’s Office** as it celebrates and educates the public about the 40th anniversary of *Gideon v. Wainwright*, a landmark U.S. Supreme Court case ensuring the sixth amendment right to counsel by requiring appointment of counsel for indigent defendants. WATCH sees public defenders—who play a critical and often misunderstood role in maintaining the integrity of our justice system—do good work every day. We wholeheartedly agree with Hennepin County chief public defender Leonardo Castro, who said in a recent *Minnesota Lawyer* article: “Whenever the government attempts to remove (or shave down) one of the three essential components of the justice system—judges, defense lawyers, or prosecutors—justice suffers.” Cautionary, and hopefully not prophetic, words in these times of budget shortfalls. ♦

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THANK YOU TO OUR 2002 VOLUNTEERS

Farina Khan Adil
Stephanie Aiyagari
Vinothini Ambrose
Amirthini Ambrose
Steve Bartman
Kristen Berg
Karin Birkeland
Lois Bishop
Melaney Bloom
Karen L. Bowen
Kendra Brodin
Brian Burgeson
Erika Burkhart
Bradley Buysse
Susan Carroll
Leone Carstens
Shelley Carthen Watson
William Chartrand
Callie Clark
Leah Colvin Roy
Kathryn Cowgill Harding
Vicki Cox
Gerri Crane
Walter Cullen
Jennifer Daugherty
Toni Decker
Glenda Dewberry Rooney

Judy Dunbar
Sarah Dunn
Jeremy Ecker
Barbara Edstrom
Lindsay Ellis
Jim Elwell
Jennifer Elsberry
Tovah Flygare
Fatima Franzen
Melissa Freeman
Kimberly Garry
Arfasse Gameda
Tarsha Glander
Sadie Ann Grochowski
Courtney Hanson
Diana Harvey
Holly Hofstad
Christopher Hogg
Mary Homrighous
Jed Iverson
Kate Jaycox
Debra Jessen
Lori Johnson
Jennifer Johnson
Gary Joselyn
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Michael Kerkinni
Inna Kogan
Lisa Kostick
Diane Krengel
Mary Lay
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Thomas Lockhart
Dee Long
David Lucas
Charlene Lucken
Deborah Macaulay
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Katie Massopust
Shirley Meredith
Mark Merritt
Violet Meyer
Bryn Meyer
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Marge Noble
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Shannon Schmidt
Ericka Schmidt
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Cindie Smart
Laurie Snow
Sarah Strandjord
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Mia Sullivan
Jon Swenson
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Heidi Tysk
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Nancy Wangen
Helen Watkins
Laura Weekly
Lauren Wilcox
Michelle Wilmot
Julie Xiong
Lucinia Zamith
Ben Zapolski
Andrew Zeal
Kevin Zhao

**Would you like to add
your name to the list?**

**NEXT
VOLUNTEER
TRAINING**

June 2nd and 4th

Contact Libby Wyrum
for more details:
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