Hennepin County Criminal Courts
A View from the Outside

A Report Based on One Year of Observations by WATCH Volunteers

April 1994

Compiled by

WATCH
Suite 1001, Northstar East
608 Second Avenue South
Minneapolis, Minnesota 55402

For more information contact

Jacquelyn Hauser, Executive Director
(612) 341-2747

INTRODUCTION

"[T]he 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 the government."
Alexander Hamilton — *The Federalist* No. 17 (1787)

". . . psychological barriers [to justice system services] can be created by mysterious, remote, unduly complicated, and intimidating court procedures."
The Commission on Trial Court Performance Standards (1990)

About WATCH

WATCH is a court monitoring organization founded, in part, as a response to the 1991 assault and murder of Jean Broderick. Her assailant, Martin Estrada Perez, had a record of seven felony arrests in three states for rape, assault, and burglary. He had been imprisoned in Minnesota for second degree criminal sexual conduct in 1984 and had been on parole for that offense for eight months when he killed Jean Broderick.

In November of 1991, the Minneapolis Star-Tribune ran a series of articles entitled "Free to Rape" which detailed other instances of lenient sentencing and the dismal success rate for "treating" pedophiles and other sex offenders.

A small group of women met to discuss the issues raised by that series as well as ways to reverse the apparent upswing in violence against women and children. In March, 1992, WATCH was incorporated.

During a year of research and preparation, WATCH learned that although there are many good victim support agencies, there is frequently no interested presence in the courtroom to hold the system accountable for its actions. WATCH decided to play that role.

WATCH defines its mission as making the courts more effective and responsive in handling cases of violence, particularly against women and children, and creating a more informed and involved public. WATCH is a court monitoring group that advocates when it sees the need for change, not an advocacy group that monitors to produce specific changes.

WATCH began observing the Hennepin County courts in March, 1993, collecting data on felony level cases of criminal sexual conduct, assault (domestic abuse), child abuse, and child sexual abuse. WATCH has trained over 100 volunteers who carry distinctive red clipboards when they are observing a proceeding. They are trained to monitor arraignments, pre-trials, trials, sentencings and probation revocation hearings.

Unlike state appointed task forces, WATCH receives no government funding. It is supported by foundations, including a major grant from the McKnight Foundation, as well as individual donors who have given not only financial support but many hundred hours of time.

About This Report

As of March 1, 1994, WATCH volunteers have observed more than 1600 appearances on cases related to domestic abuse and criminal sexual conduct. These observations are the basis of this first report.

WATCH volunteers note objectively observable behaviors of court personnel such as timeliness, ability to be heard, inappropriate jokes or sexist statements, and attentiveness to the victim. They also note how much of the proceedings take place in the judges' chambers, the apparent race of the victim and of the defendant, the amount of bail set, and any upward or downward departures from the sentencing guidelines. Cases that have unusual outcomes or raise the monitor's attention in any way are referred to staff for further research in order to develop a more complete understanding of the issues affecting the case.

WATCH also spoke with many personnel in the criminal justice system. Information gathered from these conversations and from research into specific cases is also presented in this report.

The report is meant to present those in the Hennepin County Criminal Justice System with a view from the outside. It is also intended to make the public more aware of practices that create barriers to judicial services and that impact the safety of the community as a whole.

The Volunteers

WATCH volunteers come from a variety of backgrounds and experiences. They are college students and restaurant workers as well as retired social workers and teachers. They are musicians and writers, legal assistants and former probation officers. While the majority are women, approximately 10 percent are men. Some volunteers have suffered abuse or assault, and a handful have had some experience with the justice system. Prospective volunteers are screened to eliminate any with personal grievances against all or part of the criminal justice system. Volunteers bring to the system a fresh perspective. They have few preconceived notions of how the system should work. They report what they see.

Intentions and Focus

WATCH's original intent was to discover why violent offenders slip through the system and reappear in our neighborhoods so quickly. The focus was to be on judges because, although they ultimately report to the electorate, they are relatively isolated from each other and their actions are not routinely observed by the public.

That focus has expanded because WATCH found that individual parts of the system seldom work together. Too often, no one accepts responsibility. Police blame prosecutors for not charging cases; prosecutors blame police for sloppy investigation; judges blame bailiffs for not bringing defendants to the courtroom so that they can start on time; public defenders blame probation officers for not understanding the needs of their clients; probation officers say their caseloads are so high and communication is so poor that it is impossible for them to do their jobs effectively. These complaints may have some validity, but the result is a system that lacks accountability or too often fails those caught in its net.

WATCH is aware that observing what happens to accused criminals and their victims once they reach the courtroom offers only a limited view of a complex and alarming social problem. The need for creative approaches to deter criminal behavior before it reaches the courtroom is evident to any who observe the sad stories of criminals, victims and their families. The current push for innovative approaches such as family intervention techniques and training in conflict resolution in the schools offers far more hope for the future than simplistic rhetorical slogans.

However, until preventative measures show results, criminal cases will continue to strain the criminal justice system. By continuing its court monitoring efforts, WATCH will be a constant reminder of the public's concern about the

effectiveness of that system.

WATCH's effect on the system thus far can be guessed at but not proven. WATCH representatives have been told frequently by those in the system that since WATCH volunteers arrived in the courtroom many changes for the better have taken place. WATCH sees this as a good indication that the system will consider the kinds of improvements recommended in this report.

WATCH and Legislation

When the public loses trust in the judicial system it turns in frustration to the more visible and responsive legislative branch to demand stringent, but not always realistic, solutions.

Minnesota has passed exemplary legislation in recent years. But WATCH has observed that what is mandated at the state house is often stalemated at the court house. Minnesota Statute 609.101 subd. 2, for example, which requires the court to impose mandatory minimum fines for certain crimes, is oftentimes not enforced. State Senator Jane Ranum, who is also a Hennepin County prosecutor, cites many causes for non-enforcement of existing statutes, ranging from lack of resources at the county level to "good old complacency."

If the criminal justice system operated in a way that inspired public confidence, then any new legislation could focus on issues and procedures that increase effectiveness, rather than aim at further narrowing the decision-making power of the bench.

The Bench

WATCH has not been able to observe all of the judges on the Hennepin County Bench because some are on long term assignments to the Family, Juvenile or Probate Courts. Also, within weeks of WATCH's entry into the courts, a number of judges stopped hearing the types of cases WATCH observes. They apparently are no longer being assigned to sexual assault, domestic abuse and child abuse cases, but it is unclear why this has happened.

This report does not name specific judges. It does, nevertheless, cite several examples of cases which illustrate our most serious concerns. We have found that judges with a demonstrated sensitivity to issues of violence against women and children are frequently assigned to the cases WATCH observes. However, inadequate communications technology as well as pressures cited in this report can and do cause oversights which are unavoidable under current circumstances..

WATCH is aware that the Hennepin County Bench has recently undertaken a Total Quality Management effort and some of the problems noted in this report coincide with problems that TQM seeks to address. WATCH is concerned, however, that the court, in this laudable effort, could forget the victim.

It is important to note that WATCH has not observed a system deliberately indifferent to the needs of the people it serves. WATCH monitors have witnessed numerous cases in which each part of the system does perform well. The problem is that the parts do not always perform together. Based upon our observations, WATCH believes that the bench must take a more active role in making sure that the system pulls together and functions effectively.

WATCH will continue to monitor the courts as detailed in this report. Recently developed computer software will provide more in-depth and statistical data for future reports.

> **Note:** In cases where gender references were unavoidable we referred to the defendant as "he" and the victim as "she." We are aware that not all victims of assault and abuse are women and that not all perpetrators are men. However, the vast majority of defendants in sexual assault cases and in assault (domestic abuse) cases are male. Those statistics affected our choice of pronouns.

CONTENTS

I. Judicial Performance and Effective Administration

Material included here is based on objectively observable behavior — what our volunteers have noticed and victims have told us. These comments are meant to serve as useful feedback to the judges, many of whom have said that they look forward to an outside perspective on their performance.

Issue: Delay in Processing Cases

WATCH is aware of several very serious cases that have lingered in the court system, in some instances, for years. According to the Trial Court Performance Standards issued by the National Center for State Courts, "A trial court should meet its responsibilities to everyone affected by its actions and activities in a timely and expeditious manner. Unnecessary delay engenders injustice and hardship. It is a prime cause of diminished public trust and confidence in the courts."

Furthermore, the defendant and victim are legally entitled to a speedy trial. Some of the delays may be attributed to the difficulty judges experience juggling civil and criminal cases and moving between two calendars. Regardless, the system must keep in mind the detrimental effects delays have on the survivor's recovery and on public trust.

Extended Delay in Child Sexual Assault Case. A child who was three years old when a neighbor sexually assaulted her, did not have her case set for trial until she was seven, by which time her mother had to consider whether it was worth making her daughter remember an event that occurred more than half her lifetime ago.(DNA testing took nearly two years to complete and the case was in the court system for two years after being charged) While awaiting trial the defendant, John Michael Strand, was out on a conditional release (See appendix A.)

Delay in Trial and Sentencing. In another case, the parents of a woman who had been stabbed 14 times experienced delay after delay while waiting for the case to proceed against Joseph John Jakubic, who was charged with second degree murder. Finally, after more than a year, the family agreed to the terms of a plea negotiation. They looked forward to the sentencing date with the hope that they could finally experience closure in this ordeal. The judge, however, twice canceled the sentencing — once, less that 24 hours before it was to occur and again while the family waited in the courtroom with friends and relatives. They had to cope not only with their grief, but with what they described as embarrassment and humiliation at having asked friends to take time off work for nothing. The actual sentencing did not occur for more than a month after it was originally scheduled. (See appendix A.)

Delay in Sentencing: Effects on Victim. At the scheduled sentencing of Terry Anderson, the "Wirth Park rapist", the two victims were present and prepared to make impact statements only to hear the defense attorney announce that he had been in trial and had not had time to review the court psychologist's report. One of the women (who had fought back and knifed Anderson) was so angry and distraught about her experiences with the justice system that she could not bring herself to appear when Terry Anderson was finally sentenced a month later. (See Appendix A.)

Recommendations

- Judges should establish clear deadlines for the defense, prosecution, probation officers and all others (including themselves) involved in cases where complicated issues may cause delays. Judges should make certain that all participants meet these deadlines prior to the scheduled appearance.
- If a delay is inevitable, all parties should be notified immediately. To cancel a sentencing after victims or family members have arrived at the courtroom is inexcusable.

Issue: Chronic Tardiness

Those who work in the court system often joke that almost no appearances start on time. This is no laughing matter for victims and their families. Even when legitimate activity is going on behind the scenes, the impression left with those waiting in the courtroom is that of confusion and disorganization.

Without exception, victims who have spoken with WATCH say they felt insulted by the late starts. Others say they felt guilty having asked friends and family members to take time off work to support them at a difficult hearing only to be left waiting for an hour or more for the appearance to begin. On only one occasion have we heard a judge apologize for being late.

Appearances that start late carry with them a significant financial impact as well. We have watched courtrooms full of paid personnel — clerks, bailiffs, attorneys, probation officers — sitting idly while waiting for other personnel to appear.

> **Volunteer Comments.** "The courtroom was unruly — it reminded me of an out-of-control classroom. She (the judge) didn't convene until almost 9:20 a.m., heard two cases and took a break at 9:45 a.m. She returned at 10:20 a.m."
>
> "The judge left the victim sitting in the courtroom with the defendant, who was not in custody, for 40 minutes while attorneys on other cases were going in and out of his chambers. The case was scheduled for 1:30 it was heard at 2:10."

RECOMMENDATIONS

- Judges should not be late.
- The bench should identify the underlying causes of tardiness and develop a plan to eliminate them.
- The bench should use sanctions to enforce timeliness.
- When appearances don't start on time, the judge or the judge's clerk should enter the court to explain the delay.
- When numerous cases are scheduled to follow one after another, such as in the Probable Cause Pretrial Calendar, those waiting for a particular case should be given a description of what will be occurring, so they understand why they must wait.

Issue: Release After Plea — Release Pending Sentencing

Defendants whose convictions call for a presumptive prison sentence under the sentencing guidelines are sometimes released between the time of conviction and the scheduled sentencing date. (This period can amount to many weeks). Once the defendant has posted bail, there appears to be a strong reluctance to take him into custody prior to sentencing. Victims feel terrified that the individual they have helped convict is free for many weeks to do as he pleases. What is to keep defendants who have committed heinous crimes and are already facing significant prison terms from harming others or themselves?

Another common practice strikes us as being somewhat ironic. Defendants who are being held on significant amounts of bail are conditionally released once they plead guilty. In other words, during the time they are presumed innocent they are held in custody but once they admit they are guilty they are released without having to post bail.

WATCH has also witnessed cases in which the defendant is allowed to remain out of custody even though he has shown, by committing other offenses while on release or not showing up for appearances, that he is not a good candidate for release.

Suicide on Release. Arthur Skaj, who plead guilty to third degree assault and fifth degree assault, committed suicide while awaiting sentencing. He was first charged with first degree criminal sexual conduct after a 5 year old male reported that he had been assaulted by Skaj. He eventually plead guilty to third degree assault and was conditionally released pending sentencing (third degree assault does not carry with it a presumptive prison sentence). Nine days into his release he raped his former girlfriend and was charged with third degree criminal sexual conduct. He plead guilty to fifth degree assault and was again released pending sentencing at which time he committed suicide. The similarity to the Grant Hussey case here is obvious. Fortunately, in this case, the defendant took only his own life.

Peterson, Rick, Strand. Scott Joseph Peterson was convicted of and Darrin Scott Rick plead guilty to multiple child sexual abuse charges, and were released for several weeks pending sentencing. Court psychologists noted that Peterson did not cooperate with court ordered testing and feared he may be suicidal.

When John Michael Strand finally was sentenced, the judge allowed him six days before he needed to report for incarceration. The victim advocate in the Strand case told WATCH that the mother of the victim was satisfied with the sentence but that what she really wanted after so many years (See Delays in Processing Cases) was to see the defendant taken into custody.

Vincent Lamont Brown. Brown was charged with first degree criminal sexual conduct on July 10, 1992 after allegedly raping a 16 year old girl while taking her home from a party. Bail was originally set at $40,000 but was reduced to $1000 cash, which he paid. There were several delays in the case because the prosecutor and defense attorney were in trial. During his release while awaiting trial he was arrested in South Dakota for harassing a former girlfriend and was arrested again in Minneapolis for domestic assault. In spite of these violations, and at least one nonappearance that prompted a bench warrant, bail was not revoked. When the defendant plead guilty to attempted third degree criminal sexual conduct on September 22, 1993, 14 months after charges were filed, he was released pending sentencing. His sentencing was set for November 10, 1993. He failed to appear. There is an outstanding bench warrant for his arrest.

RECOMMENDATION

- For the safety of victims, witnesses, and the public, defendants convicted of, or pleading to, offenses which carry a presumptive prison sentence should not be released pending sentencing.

Issue: Demeanor at Sentencing

Many judges issue a sentence without issuing a reprimand. Judges must remain impartial throughout the criminal proceedings, but once the defendant has plead or been found guilty, it is appropriate for the judge to make a strong critical statement to the defendant and to demand that the defendant show respect for the court. In many cases the defendant has spent months in denial about the offense, as defense lawyers discussed getting him the best deal. The harm caused by the crime goes unmentioned. If the judge doesn't send a message that the defendant has done wrong, who will?

Victims we've spoken with say that recovery is made easier when the judge acknowledges how hard the process has been for her, thanks her for coming forward, and sends a strong message to the offender that he has done wrong.

Failure to Reprimand Defendant. Jesse Garland plead guilty to raping two women at gunpoint and attempting to rape two others. At sentencing he was defiant, impatient and rude. Some people in the courtroom, presumably his friends, verbally harassed a victim after she read her impact statement. After sentencing, the victims expressed anger because the judge had not exerted more control over Mr. Garland and his friends. One wrote to the judge, "I think you were harsh on all of us victims. Specifically, you allowed Jesse to smirk, glare and even laugh out loud at us when we needed to give our impact statements. I was surprised that this behavior would be allowed in a courtroom. It seemed as though Jesse received all the respect and you gave us none."

RECOMMENDATIONS

- When appropriate, the judge should make a strong critical statement to the defendant at sentencing. Victim advocates report that victims who hear the judge make such a statement feel much more positive about the criminal justice system than those who hear the judge simply read the sentence. According to a recent study, rape victims who are satisfied with the justice system experience fewer symptoms of depression, fear and anxiety, than do those who are less satisfied. (See Appendix B)
- The judge should acknowledge the victim's pain by saying she has done something right by coming forward.

Issue: No Background for Decisions

Judges should explain how they have reached their decisions yet many do not. Even when WATCH does not agree with a decision, it is difficult to criticize a judge who specifically states the reasons behind a decision. It sends the message to the victim, defendant and their families that the judge has taken the time to consider the issues and has not made an arbitrary decision. Victims who have spoken with WATCH concur.

Decision Behind Reduced Bail. At a recent arraignment appearance the judge decided to lower a defendant's bail. She then gave a thoughtful account of what in this man's record made her decide to take a chance. Not only did her reasoning seem to have a strong impact on the defendant but others in the courtroom seemed to take notice as well. This judge came across as rational, compassionate and fair.

RECOMMENDATION

- Judges should offer a brief explanation of the reasoning behind decisions. Doing so makes the proceedings less remote and mysterious and builds trust.

II. Victim Issues

WATCH volunteers observe the courts from the perspective of someone who has been the victim of a felony level offense. Therefore, it can be said that virtually everything in this report is about "victim issues." The following four issues were specific enough, however, to warrant their own category.

Issue: Privacy

Currently the Rules of Criminal Procedure call for the defense to have access to the names and addresses of victims unless the prosecutor can prove that to do so would "subject such witnesses or persons or others to physical harm or coercion" (Rule 9.01 Subd. 3(2) Minnesota Rules of Court 1993). WATCH believes victims who have had their privacy shattered by assault should not be subjected to further invasion.

Timothy Baugh's Alleged Victims. This issue came to light recently in the case of Timothy Baugh, who has been charged with 13 rapes in south Minneapolis. Baugh's defense attorney has argued that he needs access to the current addresses of the alleged victims so that he can interview them in their homes where they will feel more relaxed and be more cooperative. Most of the women have moved, some several times, in an attempt to feel safe again.

The prosecution must prove that these women have actually been threatened by the defendant or his family members in order to deny the request. Even if the defense is not successful in obtaining the addresses, constant requests for them seem designed to harass and intimidate the victims.

RECOMMENDATION

- The Rules of Criminal Procedure should be changed so that when the victim's current address has no relevance to the case, he or she should not be required to provide it. The prosecutor should arrange a mutually acceptable location where the defense attorney may interview the victim.

Issue: Insensitivity to the Situation

Rather than going to the security door at the end of the hall, court personnel often use the courtroom as a short cut to judicial chambers. They do this despite the fact that a victim may be sitting in the court, nervous about testifying and terrified of seeing her assailant again. Those who cut through the court are often laughing and chatting, oblivious to those who wait. It is important for court personnel who have become numb to the violence of assault and abuse to be reminded that the victim who is sitting there has not.

Jesse Garland Sentencing. Jesse Garland plead guilty to raping two women at gunpoint and attempting to rape two others. WATCH observed the four victims of his sadistic attacks waiting in court from 1:30 until 3:45, while the terms of the plea were being worked out in chambers. Some had prepared impact statements and were clearly apprehensive about confronting their attacker for the first time since the assault. As one victim wrote later, "I was scared to death to face this person again, but at the same time I knew I had to do this — go through the pain again. It was the hardest thing I've ever had to do." Throughout the two-hour wait, court personnel crisscrossed the room, oblivious to those who waited. Every time the door from the chambers side of the courtroom opened, the women, thinking that the defendant was being brought in, jumped as though a high voltage current had been shot through them.

RECOMMENDATIONS

- Court staff should no longer use courtrooms as short cuts to chambers. Post signs on doors prohibiting this practice. (Some judges have started doing this.)
- Victims should be allowed to wait in jury rooms or private space until the defendant is brought in. This is especially relevant when the defendant is not in custody and actually ends up sitting near the victim in a public area. Recent legislation states that victims be given a private waiting room, but that does not always happen.
- Victims should be given periodic updates and told when the defendant is about to enter the courtroom.

Issue: Sentencings in Inappropriate Settings

Some judges have been scheduling sentencings in the midst of other proceedings such as the Probable Cause Pretrial Calendar or the Felony Arraignment Calendar, presumably in an effort to improve efficiency. For many victims, making an impact statement at sentencing is an important step to healing and is an intensely

personal moment. The noisy and very public environment of the calendar courts has a chilling effect on the victim who may already be apprehensive about making her statement.

Sentencing at Arraignment Calendar. A recent sentencing of defendants Lennard David Stoedlen and Albert Hall took place at the Felony Arraignment Calendar where 58 cases were waiting to be heard. Stoedlen's victim was present with her family. They were unable to find a place to sit, and there was so much commotion in the courtroom that they were unable to hear the proceedings.

In the sentencing of Hall, the judge allowed the defendant and his attorney to talk while the victim's impact statement was being read. The victim was not present in the courtroom but had written a very emotional letter telling the defendant how she had suffered as a result of his attack. The defendant never heard it.

RECOMMENDATION

- Sentencings should not be scheduled as part of another calendar. Respect for the victim's right to make a statement in a less hectic and public setting should take precedence over expediency.

Issue: Sentencing for Attempted Rape

WATCH will gather additional case information before making recommendations on current sentencing guidelines. However, one situation is so troubling that we feel we must call public attention to it at this time.

The recommended sentence for a defendant charged with attempted criminal sexual conduct is one half that of the defendant charged with criminal sexual conduct, that is, a completed act. In other words, a woman who succeeds in fighting off an attacker, actually reduces his prison sentence by half, even though the perpetrator is no less dangerous.

Self Defense in Wirth Park. A woman who was attacked while cross-country skiing in Wirth Park was able to wrestle the knife away from her assailant, Terry Anderson, and stab him severely enough that he required medical attention. He was apprehended later at the hospital. Although he was charged with and plead guilty to another sexual assault which did lengthen his sentence, this woman was incensed to learn that her actions substantially reduced his sentence in the attack on her.

RECOMMENDATION

- This is a complex situation which requires careful legislative review. However, WATCH believes that the reward for valor should not be a shorter sentence for the assailant.

III. Probation and Conditional Release Practices

Issues of probation and conditional release are particularly complex and so are the solutions. The probation department, for instance, has been in the process of a reorganization for nine years, which has, according to some, created significant new problems. In addition, probation and conditional release activities are difficult to monitor since much of the work takes place outside the courtroom. For these reasons, WATCH offers few recommendations at this time, only observations and examples which have prompted concern.

Issue: Lack of Communication

Investigation into the cases involving Jimmy Lee Summers and Kiumars Farbahshkh, raised questions about the level of communication within the Bureau of Community Corrections and between that bureau and the bench.

Example: Jimmie Lee Summers. When a defendant is conditionally released (either with no bail required or having posted bail) the conditions usually include restrictions such as, no use of alcohol or drugs, no contact with the victim, or for a pedophile, no unsupervised contact with children. The public assumes that there is a high level of supervision, particularly for sex offenders. They should not.

Investigation into the case of Jimmie Lee Summers (See Appendix A) shows that he had been on conditional release for over a year while awaiting trial on two counts of first degree criminal sexual conduct, two counts of first degree burglary and one count of vehicle theft. The conditional release officer to whom Summers was to report during his release had no record of Summers nor were there any records for him within the entire department. Probation staff tell us that this is not an isolated incident.

WATCH has noted that some defendants, after they have been arraigned, are specifically assigned to the conditional release unit, while others simply have conditions placed on their release with no mention of a referral to the Conditional Release Unit. Who is responsible for supervising the individuals who are not specifically assigned to the unit? Could this practice result in cases going unsupervised?

Example: Kiumars Farbahjsh. Kiumars Farbahjsh has a history of approximately 20 misdemeanors and gross misdemeanor offenses involving theft and violation of orders for protection.

WATCH was contacted by one of the victims of the violation of protection orders, who explained that the defendant had been stalking her for two years and had had a devastating effect on her personal life due to his constant presence.

The victim received an order for protection which the defendant quickly violated. Several calls to the police finally resulted in an arrest. He immediately posted bail and violated the conditions of his release on bail by continuing to stalk the victim.

Investigation into the case showed that the defendant was to appear on the Property Crimes Calendar on a felony theft case that was unrelated to his stalking activity and that a pre-plea investigation had been ordered (a clue that the case was likely to be disposed of at that calendar). The violation of protection, charged as a misdemeanor, was included with the felony, a practice frequently referred to as "tagging along". The result of this practice is usually that multiple offenses are disposed of as if they are one, meaning in this case it was likely that Farbahjsh's stalking behavior would not be dealt with at all.

Because of his extensive criminal history, several probation officers were assigned to the defendant. It took nearly two hours of phone calls to find out who could issue an arrest and detention order to take the defendant into custody for violating his release conditions. None of the assigned officers knew of the defendant's stalking behavior.

Because the victim came forward and did an excellent job of documenting her case the violation of protection case was separated from the theft case and was charged separately as a felony stalking. It took extraordinary effort on the victim's part to make this happen. Such effort should not be necessary in order to get the system to listen and respond.

Issue: Increased Use of Pre-Plea Investigations

WATCH volunteers sensed dissatisfaction on the part of some prosecutors, probation officers, and victim advocates when pre-plea investigations were ordered by the judge.

When WATCH sought to discover the reasons for the concern, the answers were disturbing

The use of pre-plea investigations has grown rapidly over the past few years. Most attribute this to the pressure to move cases through the system quickly and avoid time consuming trials whenever possible.

Unlike pre-sentence investigations in which the defendant has been found guilty or has plead guilty to an offense, pre-plea investigations are done before the defendant has admitted to anything. Consequently, the defendant can learn his recommended sentence and decide whether or not to plead guilty. Though investigating probation officers are permitted to ask about the offense, defense attorneys frequently tell their clients not to discuss it. Therefore, it is difficult to evaluate the defendant as a convicted offender. The effectiveness of key diagnostic tools (e.g., evaluating remorse, regret and motivation to address the inappropriate behavior) is greatly diminished.

Of equal concern is that pre-plea investigations do not include mandatory victim input as do pre-sentence investigations. If the defendant likes what he sees in the pre-plea investigation, he may opt to plea immediately, meaning that there is little opportunity for victim input into the process.

As one probation officer put it "The defendant, in advance of taking steps to acknowledge his offense, can check out what is going to happen to him. ...If he doesn't like it, he hasn't lost, he has never committed. It seems as if we are giving the defendants more and more room to negotiate but we don't bolster the system on the victims behalf"

Issue: Revocation of Probation

Revocation of probation can occur when the defendant does not comply with the conditions of his probationary sentence. Such conditions often include: no new criminal behavior, no contact with the victim, and successful completion of a treatment program. Probation officers have the authority to have the defendant taken into custody by issuing an Arrest and Detention (A&D). The judge (whenever possible the judge who sentenced the defendant) has sole authority to actually revoke the probation. When probation is revoked the defendant can be sentenced to serve the stayed time of his original prison sentence. For example, 48 months stayed prison sentence, 365 days in the workhouse with probation for 10 years. A revocation in this case could result in the defendant going to prison for 48 months.

Probation officers occasionally use revocation hearings to coerce defendants into complying with the conditions of probation, and judges sometimes are reluctant to revoke probation, since once the prison time (which is usually much shorter than the probation period) is served, the system no longer has any leverage over the defendant. As a result, it is sometimes difficult to evaluate a revocation hearing since there may be an underlying agenda that is never revealed to those who are observing.

On researching the issue, WATCH randomly pulled data on 40 revocation matters. In nearly half of those matters, 19, arrest and detentions were issued but probation was not revoked. Of those 19 cases, 17 were brought into court on an arrest and detention two or more times.

Since WATCH has just begun its study into this area and has not had an opportunity to complete a detailed investigation into these cases, the defendants are not listed by name. However, these are examples of the type of cases that have prompted our interest.

Example. The defendant who had a long criminal history of domestic assault with the victim, again beat her badly, causing significant bodily injury. He was held on bail but was conditionally released when he plead guilty. He did not appear at sentencing and was not found for several months. When he was found he was sentenced to probation and was told to undergo treatment. He again disappeared and an A&D was issued. He was again found and given another opportunity for treatment. He left the treatment facility a month later and again attacked the victim, this time breaking her jaw.

Example. After numerous revocation hearings had been set, a judge moved an offender from supervised probation to unsupervised probation stating that he was tired of trying to make him do things. The case had recently been assigned to a new probation officer who was unaware of the revocation hearing and was not in attendance. The offender was on probation for third degree criminal sexual conduct.

Example. In another case, the defendant was given the option of completing treatment or reporting to Stillwater in June. It appears that the defendant, who plead guilty to fourth degree criminal sexual conduct and has once failed the Alpha Services (treatment) Program, is left unsupervised for the three month interim.

IV. Barriers to Judicial Services

At first glance, the issue of making court services more understandable and accessible to those who must use them may seem secondary to the goals of WATCH. However, in pursuing WATCH's mission to make the courts more effective and responsive in handling cases of violence , particularly against women and children, some of the more mundane problems within the courts must be addressed. When information isn't easily available, when court procedures are confusing or can't be heard, no one is well served. The defendant feels "robbed" or that the system is "a joke" and the victim sees no reason to participate. When victims cease to participate, charges are dropped. When charges are dropped, the defendant goes free and the justice system continues to unravel.

Issue: Getting Accurate Information

Gathering information on a case can be difficult and confusing. Most lay people must rely entirely on the staff of the felony information desk, where there are frequently several people waiting for assistance. (WATCH observers have noted, however, that staff at the felony information desk are generally courteous and helpful to all who seek assistance.)

Information such as what courtroom has been assigned and which judge will hear the case, can be found by searching through two hefty computer printouts which are available at the information desk. However, the codes and abbreviations are not easy to decipher and the telephone-book size of the printouts is daunting. Furthermore, information found in the printouts, which are prepared the previous day, may already be out-of-date due to delays and scheduling changes.

Most victims of felony level offenses have a victim advocate working with them to explain what is happening, but victims of misdemeanor and gross-misdemeanor offenses do not. These people, often with small children in tow, appear bewildered, intimidated or angry.

Recommendation

- Ideally, information should be available on self-prompting computer monitors that would allow people to scroll through the day's information. Libraries, for example, now provide public access to card catalogues this way. Having the system automated would mean that information could be updated regularly. Those who

do not have strong language skills, or are physically or mentally challenged, could still seek help from the information staff. The TQM experiment, using a staffed information kiosk on the public service level, is a less high-tech approach to the same problem and may be quite adequate.

Issue: Confusion at Arraignment and PCPT Calendar

Both felony arraignment and probable cause pre-trial courtrooms are particularly busy and confusing. For some, it is the first encounter with the justice system and it is difficult to make sense of how the proceedings are conducted. WATCH volunteers have been approached by numerous people, mainly family members of defendants, who don't understand what is happening. Some have even asked where it is "legal" for them to sit or if they should wait out in the hall.

> **Volunteer Comments.** ". . . the saddest thing for me was watching (in a PCPT courtroom) a defendant in his late 60s or early 70s and quite frail looking try to find out if his case was scheduled for that day. After patiently sitting in the courtroom for almost an hour, he quietly stood before the table where they keep all the files for the cases to be heard. Everyone ignored him. Finally, he asked when he was scheduled and explained that he didn't feel very well."
>
> The volunteer recounts how this man was sent from one person to another and concludes, " . . . he asked politely for assistance and was met with dumb, stone-faced silence."

RECOMMENDATION

- District Court personnel should be stationed by the door to the felony arraignment and PCPT courts to assist those with interest in the proceedings.
- The judge should describe what is happening, not only at Felony Arraignment and Probable Cause Pre-trials, but at any appearance when it is not absolutely clear to those who are waiting.

Issue: Child Care

Virtually all WATCH volunteers have commented on the large number of small children in the courtrooms. These children are brought by parents, usually mothers, who cannot afford child care and have no backup support network. These children are occasionally disruptive and distracting, but our concern is also for their well-being. It doesn't seem right for any child to be sitting in court while a parent is arraigned, or to hear one parent testify against the other.

Children whose lives have, in many cases, been filled with violence, should not have to see their family go through the criminal justice system. In addition, young children are, by nature, active and disruptive, making it impossible for their parent(s) and others in the courtroom to focus on the serious matters at hand.

> **Children Observed in Court.** WATCH observed three children approximately 2, 3, and 4 years old, sitting almost too quietly for two hours, waiting for their father to be arraigned. When the father finally appeared the youngest tried to get to him crying, "My daddy, my daddy."
>
> In another case, a woman who wanted to speak at a hearing regarding the defendant's violation of her (the victim's) order for protection had to leave the courtroom because her children were misbehaving. The case was called and she was not there to present her concerns.
>
> At a sentencing, an infant was crying so loudly that the judge had to ask the mother to take the baby out of the courtroom.

RECOMMENDATION

- A provision should be made for drop-by child care near or at the courthouse for those who must attend a hearing. The staff should be trained in violence intervention and abuse detection since it is likely that many of these children are "at risk." The county should explore contracting with an existing agency.

Issue: Appearances Don't Take Place in Assigned Court

On countless occasions, WATCHer's have gone to an assigned courtroom and have seen the prosecutor and defense attorney walk through the courtroom, presumably to go to the judge's chambers. Because hearings often start late, the volunteer waits, sometimes for as long as two hours, only to see the defense attorney and the prosecutor walk back out of chambers, through the courtroom and leave. No one, not the judge or anyone from his or her staff, has come into the courtroom to explain what has happened, even though the matter appears on that day's calendar.

Victims, family members and others are left waiting in the courtroom trying to determine what is happening — whether they're in the right place, or whether the hearing has been moved and they've missed it. For some of these people the reaction is anger; more often it seems to be an overwhelming sense of powerlessness and frustration.

RECOMMENDATIONS

- A schedule of events should be posted outside each courtroom every day. Individuals looking for a particular case will then know immediately if they are in the right courtroom.
- The daily schedule for the entire bench should be posted by the elevators on each floor. Judges can then be located quickly, eliminating a visit to the 11th floor information desk.
- When a case is assigned to a courtroom, someone (the judge or his or her clerk) should come into the courtroom at the time of the scheduled appearance to tell those interested in the case what will be happening and when.
- If the discussions regarding the case take place in chambers, the judge should come to the courtroom at the completion of the discussions to announce what has just transpired.

Issue: Discussions In Chambers

Overwhelmingly, our volunteers have expressed surprise at how little actually goes on in the courtroom. They have commented that when the proceedings do finally move from chambers to the courtroom, they often seem scripted. Attorneys who have practiced in other jurisdictions also note the extensive amount of discussion that takes place in chambers in Hennepin County.

Trust is not enhanced by in-chambers negotiations. WATCH has heard defendants, left waiting in the courtrooms while the defense attorney, prosecutor and judge are in chambers, commenting that their attorney is "selling them down the river." Victims have expressed similar uneasiness as they wait to hear the terms of a possible plea agreement and/or sentence.

Also, the vast number of complaints we have received from professionals who work within the system, have referred to comments made in chambers. It should be noted that these complaints do not refer solely to comments made by judges.

WATCH also believes that more openness would lead to greater efficiency, rather than less, since it would eliminate much non-case related conversation that reportedly accompanies in-chambers discussions.

Finally, we are also aware that judges are sometimes unhappy with proposed plea agreements and consequently, reject them. Because this is never on the record, the judge does not receive credit for his or her decision.

> **Volunteer Comments.** "Everyone went into chambers at 1:15 and never returned! A woman (staff) took my first name to the judge and told him I wished information on the case. She returned with the answer that all was being done in chambers."

RECOMMENDATION

- WATCH recommends that the bench limit the amount of discussion that takes place in chambers. WATCH intends to do additional research on this issue.

Issue: Hearings that Can't Be Heard

Even when a scheduled hearing is taking place in the courtroom it is often impossible to hear what is being said. This is true particularly at the Felony Arraignment Calendar and at the Trial Assignment Calendar. If family members, friends and others have taken the time to be in court, they obviously are interested in hearing the proceedings. To be unable to hear is to be excluded. This is one more barrier to judicial services.

RECOMMENDATION

- Judges should speak clearly and audibly. They should maintain order and decorum in the courtrooms so all can hear. They should occasionally ask if those in attendance are able to hear the proceedings.

V. Policy/Accountability

The following situations and recommendations do not necessarily result from WATCH's court monitoring activities. However, WATCH has a strong interest in both areas and believes they are relevant to WATCH's mission.

The Board on Judicial Standards

Chief Justice Keith has appointed a task force to make recommendations for revisions to the rules that govern judicial behavior. The most significant issue before the task force is whether judges will be subject to public scrutiny when their actions are in violation of the rules. These rules cover a number of behavioral and ethical issues including sexual harassment, racist and sexist remarks, and the misuse of authority, among others. In all but the most extreme cases, the current rules allow for violations to be dealt with (or not dealt with, as the case may be) in absolute secrecy. Remarkably, even the complainant is told nothing about what has resulted from his or her charges, only that "appropriate action" has been taken.

RECOMMENDATION

WATCH believes the rules governing judicial behavior should be changed to eliminate the opportunity for confidential disciplinary action. At a minimum, the complainant should be given specific information about the disposition of his or her charges.

Tenure of the Chief Judge

Minnesota Statute 484.69 subd. 1., states that the Chief Judge in each judicial district shall be elected "from among their number" to a two year term. No judge may serve more than two consecutive two year terms.

In looking at improving the effectiveness of the justice system, it appears that this statute makes it extremely difficult for the Chief Judge to implement changes that are helpful and important to the effectiveness of the system. Since the Chief Judge is always either preparing to seek reelection or is facing the end of his or her term, in essence it makes the Chief Judge more accountable to his or her peers than to those who are the stakeholders in the justice system.

WATCH recognizes the need for each judge to make his or her own decisions independently, but in order to make important improvements, there is a tremendous need for the bench to share a common vision for the justice system. Such a vision cannot be created in an environment where leadership is transient — where the ground is constantly shifting. There needs to be a sense of stability.

Recommendation

Alternatives to the current statute should be explored. One possibility is a longer term for the Chief Judge with no opportunity for reelection. Another is appointment by the Chief Justice of the Supreme Court, with reappointment hearings every four or five years. Whatever the structure, longer terms for the Chief Judge would do much to downplay the political nature of the position and would increase its accountability to the public.