JUDICIAL RESPONSE AND DEMEANOR IN THE DOMESTIC VIOLENCE COURT

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November 15, 2001

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I. INTRODUCTION

A. BACKGROUND

On November 13, 2000, one year ago, a new domestic violence court was initiated in Hennepin County. One of the stated objectives for this court was to "create greater accountability for the offender and the system."[1] The court was assigned to handle domestic violence crimes including assault, violation of protection orders, interference with 911 calls, violations of conditions of release and orders for protection, and arrests and detentions.

Domestic violence continues to be a devastating problem in Minnesota and in Hennepin County. Last year in Minnesota, 40 women and six children were killed as a result of domestic violence. This was the highest number since 1988, when the Minnesota Coalition for Battered Women began tracking these numbers.[2] In Minneapolis, the Mayor's office reported that police received more than 28,000 domestic violence related calls in 2000.[3] The creation of the domestic violence court in Hennepin County is a significant step towards acknowledging the importance of prosecuting domestic violence crimes effectively at the misdemeanor level.

Misdemeanors make up the vast majority of domestic violence cases prosecuted in Hennepin County, with over 3,000 processed annually.[4] Generally, misdemeanor crimes are treated as lower-level offenses based on the nature of the injury and other factors. We know, however, that in the context of domestic violence, these crimes can be very serious. Often these crimes are part of an ongoing and escalating pattern of abuse aimed at intimidating and controlling victims. Consequently, addressing domestic violence effectively at the misdemeanor-level is extremely

[1] Fact Sheet, Hennepin County District Court New Initiatives, 9/29/00. The creation of this court followed months of planning and discussion by the Hennepin County Family Violence Coordinating Council (FVCC). On November 13, 2000, the FVCC published a report entitled *System Responses to Domestic Abuse: Criminal Misdemeanor Cases in Division I of the Fourth Judicial District Court* (*System Responses*), which documented how these crimes are prosecuted in Hennepin County.
[2] *Femicide Report*, Minnesota Coalition for Battered Women, 2000.
[3] Margaret Zack, *Domestic Abuse Plan to Focus on Evidence*, MINNEAPOLIS STAR TRIBUNE, October 2, 2001, at B1.
[4] *System Responses* at p. 26. The Domestic Violence Steering Committee, which oversees the new court as a subcommittee of the FVCC, routinely reviews the possibility of adding felony-level domestic violence cases to the court.

important. As one author notes,

> We must make misdemeanors matter. We must realize that true success is not prosecuting a murderer, it is preventing the murder. It is not locking up offenders for decades, it is stopping the violence so that escalating violence does not require prison beds for most domestic violence offenders.[5]

Specialized domestic violence courts, such as Hennepin County's new court, are one tool being used around the country to improve the criminal justice system's response to both misdemeanor and felony domestic violence cases. Consistency in case handling is a major advantage in these specialized courts. Also, these courts provide all criminal justice personnel assigned to work in them the opportunity to develop expertise on the complicated issues surrounding the dynamics of domestic violence. As one author notes,

> Criminal justice personnel working in the area of domestic violence need expertise in the dynamics of family violence to understand the frequency of victim recantation and the potential lethality in the cases. In courts without specialization, judges often rotate through the criminal calendars, and may not have enough experience or training in domestic violence to accurately assess the cases before them. . . . Specialization allows judges to learn the unique characteristics of domestic violence and the resources available, promoting a more informed judicial response to the problem. [6]

Other advantages include better accountability for defendants, easier accessibility for victims, and quicker resolution of cases.

B. FOCUS ON JUDICIAL RESPONSE AND DEMEANOR

With the court's stated objectives as a guide, WATCH developed a monitoring project for the new court focused on judicial response and demeanor. This focus was based on the growing recognition of the powerful impact judges have on victims and defendants in domestic violence

[5] Casey Gwinn, *Making Misdemeanors Matter*, HOMEFRONT, Vol. 3, No 2, Winter 1998.
[6] Julie Helling, *Specialized Criminal Domestic Violence Courts*, Battered Women's Justice Project, 2000, at p. 9.

cases.[7] As the final authority in the processing of a criminal case, it is the judge who maintains the power to communicate to offenders, victims, and the public whether our laws prohibiting domestic violence are meaningful or mere rhetoric. In addition, judicial demeanor and authority dramatically affect the atmosphere in a courtroom, creating the serious tone appropriate for domestic violence cases, or allowing a chaotic, informal environment that contributes to a less serious view of these cases.

C. PROJECT DESIGN

WATCH staff and volunteers began monitoring the new court in January 2001.[8] This report is based on monitors' observations of over 600 court appearances extending over an eight-month period from January to August 2001. WATCH monitored only those appearances that occurred in the domestic violence court, courtroom 1159. Those appearances were limited to misdemeanor arraignment, pre-trial, and sentencing hearings.[9] Sentencing hearings occurred in the afternoon when the calendar in the domestic violence court included other misdemeanor cases, such as traffic violations. Thus it was difficult to schedule monitors for sentencing hearings and most of our monitoring notes pertain to arraignments and pre-trial appearances. Other types of appearances in these cases, such as probation revocation proceedings and trials, occurred in other courtrooms.[10]

The author of this report also interviewed judges, city attorneys, public defenders, probation officers, and advocates regarding their impressions of the court and the impact of judicial response and demeanor in domestic violence cases. WATCH staff also attended regular meetings

[7] In general see James Ptacek, BATTERED WOMEN IN THE COURTROOM: THE POWER OF JUDICIAL RESPONSES, Northeastern University Press, 1999; Amy Karan, Susan Keilitz, and Sharon Denard, *Domestic Violence Courts: What Are They and How Should We Manage Them*, JUVENILE AND FAMILY COURT JOURNAL, Spring 1999*;* Julia Weber, *Domestic Violence Courts: Components and Considerations*, JOURNAL OF THE CENTER FOR FAMILIES, CHILDREN, AND THE COURTS, 2000; Gail Goolkasian, *Confronting Domestic Violence: The Role of Criminal Court Judges*, National Institute of Justice, November 1986.

[8] During the early months of monitoring the court, WATCH focused on acquiring a familiarity with court procedures and establishing parameters of the monitoring project.

[9] WATCH's findings are largely limited to issues related to arraignments and pre-trial hearings since most of our monitoring notes came from those hearings.

[10] The Domestic Violence Steering Committee is currently considering the possibility of including probation revocation proceedings in the domestic violence court.

of the Family Violence Coordinating Council (FVCC) and the Domestic Violence Court Steering Committee, a committee specifically created to address the operation of the court.

II. SUMMARY OF FINDINGS

As a result of its monitoring effort, WATCH identified several significant issues of concern. The most obvious and troubling theme permeating these findings is the lack of consistency in the way the judges presiding over the court handled the domestic violence calendar. The fact that twenty-one judges rotated through this calendar since its inception a year ago was a major cause of this inconsistency. Some judges demonstrated an in-depth knowledge of the complicated dynamics of domestic violence and presided over calm, orderly courtrooms. Others appeared to have less understanding of domestic violence issues, including critical issues of safety. The absence of a set of standard bench policies and procedures regarding the domestic violence court, combined with the revolving door of judicial assignments, resulted in a court in which unpredictability and inconsistency were defining characteristics. These factors reduced the court's ability to assure the safety of victims and accountability of offenders—characteristics that should be hallmarks of any domestic violence court. These factors also risked negatively affecting participants' and the public's perception of the court's fairness. This overriding theme affects all the issues outlined in the findings.

The following findings highlight WATCH's greatest concerns:

Courtroom decorum: Judges had the ability to create a calm and serious atmosphere; however, that was not consistently achieved. Courtroom decorum ranged from orderly and respectful, to noisy and chaotic. Too frequently, courtroom decorum was casual and unprofessional, lending an informal air that detracted from the seriousness of the proceeding.

Delays: WATCH observed frequent and extended delays in the domestic violence court to the point where a calendar starting on time was the exception not the rule. Delays diminished the efficiency and effectiveness of the court.

Bail: Decisions to set bail and release defendants into the community varied widely among judges. In some cases, the amount of bail did not appear to be based on any tangible factor, or the judge failed to articulate the reasons for the bail. In other cases, bail and release decisions did not appropriately reflect the severity of the offense or take into account victim and public safety.

No contact orders: Judicial practice and demeanor when issuing no contact orders and relaying the terms of the orders also varied widely among judges. Some judges were clear and firm when issuing orders, communicating their seriousness and the consequences for violations; others judges were not. There was no consistent policy on where and when no contact orders applied. Court decisions regarding whether and how to issue no contact orders did not appear to consistently consider victim and public safety.

Violations of court orders: Consequences for violations of court orders were imposed inconsistently, ranging from defendants being taken into custody to no consequences at all. Most importantly, there was inconsistency in the extent to which victim and public safety were taken into account when dealing with violations of court orders.

III. DISCUSSION

A. CONSISTENCY IN COURTROOM PRACTICE

WATCH's overriding concern about the new domestic violence court was inconsistent courtroom policies and practice. Uniform policies and procedures appeared to be lacking on many issues that arose in the court. At least twenty-one judges presided over the court during the period WATCH monitored. In one case studied by WATCH, a defendant appeared in front of seven different judges for proceedings on one charge.[11] As one criminal justice officer said in an interview with WATCH, "Every time I'm in that courtroom, it's like reinventing the wheel."[12]

[11] See Katherine Luke, *Two Weeks of Misdemeanor Domestic Abuse Court*, WATCH POST, Fall 2001.
[12] WATCH interview on 6/28/01.

Consistency is one of the primary advantages and goals of a specialized court. As one author noted,

> A specialized court typically means a limited number of judges who can draw on their expertise in domestic violence and render consistent decisions in factually similar cases. Victims can be given accurate information on possible judicial responses to the situation. Consistent sentencing policies mean that offenders can expect to receive increased penalties for increased violence, rather than hoping for the luck of the draw in appearing before random judges.[13]

A court services supervisor from Washington state clarified the importance of assigning a limited number of judges to a domestic violence court, "The advantage to a specialized court is that one judge sees all domestic violence offenders, rather than one offender having the opportunity to give six different versions to six different judges."[14]

Judges assigned to the domestic violence court exhibited varying levels of interest and knowledge about the complicated issues presented in domestic violence cases. Some judges demonstrated an impressive understanding of the dynamics of domestic violence.[15] Other judges appeared to have little information about such critical issues as victim recantation, offender coercion, the multifaceted effects of ongoing violence, or the latest research on risk assessment. As discussed in Section III, decisions on important issues such as the release of defendants, bail, and no contact orders were unpredictable and seemed to be based heavily on which judge was presiding over the court.

[13] Helling, at p. 10.
[14] Id. p. 9.
[15] In one case, for example, the city attorney told the court that it was the state's decision to pursue prosecution despite the victim's request for dismissal. The defense attorney vehemently objected, stating her position that if the victim wanted the case dismissed, it should be dismissed. In response, the judge took the time to explain carefully that coercion and threats by defendants are such a frequent and dangerous reality in domestic violence cases that it was not always appropriate to dismiss a case based solely on the victim's statements. The judge did not dismiss the case at arraignment. This case demonstrated one judge's in-depth knowledge about the dynamics of domestic violence and his willingness to thoroughly examine the context of a case as he considered victim and public safety. State v. Anthony Running, Case # 01035817 on 5/2/01.

WATCH observed that in the first months of operation, a core group of six to eight judges presided over the court. The positive effect of this was noted by another person who works regularly in the court. He stated:

> If we had a dedicated bench, more consistency would occur, there would be greater continuity. I really noticed a difference early on with the court when only a few judges were assigned to the bench. Judges then seemed to understand the process and the issues. We didn't have to start from ground zero every day and there was a unified philosophy about domestic violence resting on a base of knowledge.[16]

Judges reported in interviews with WATCH that there were no regular meetings of the judges who presided over the domestic violence court to develop uniform practices and policies. Several judges in their interviews with the author expressed an interest in having meetings and developing such policies and practices.

B. COURTROOM DECORUM

WATCH monitors made hundreds of references to courtroom decorum in their monitoring notes. It was consistently noted that judges' demeanor and conduct set the tone for the demeanor and conduct of other criminal justice personnel, the defendant, and the general court atmosphere.

WATCH monitors described courtroom atmosphere from "serious and subdued" to "chaotic," "carnival like" and "a zoo." WATCH noted that several judges were able to virtually eliminate chaos in the courtroom and disrespectful behavior by their firm and authoritative demeanor and response. WATCH also noted that, for the most part, judges who appeared familiar with the court and its routines had control of the courtroom whereas judges who were new to the court had more difficulty maintaining control.[17]

WATCH observed one judge begin a morning of pre-trial and arraignment appearances by addressing the issue of disruptions in the courtroom directly. She arrived on the bench and asked for everyone's attention. She then stated her commitment to maintaining an orderly courtroom and asked attorneys and others to be aware of disruptive conversations and, if possible, to

[16] WATCH interview on 6/28/01.
[17] This observation was confirmed by criminal justice personnel who work regularly in the court.

conduct such discussions outside the court. Her tone, while respectful, communicated her authority and control over the court. With this statement, and her continued awareness of courtroom conduct, this judge had a very strong impact on the courtroom environment.[18]

Other judges appeared to be completely unaware of courtroom atmosphere. In one case, for example, a young woman came into the courtroom with an infant and a toddler.[19] The infant became sick, causing the mother to leave the courtroom, leaving a toddler behind. The toddler became upset and began yelling, "Where's my daddy? Police! Is my daddy in jail?" The presiding judge appeared to take no notice of the disruption, continuing to look down at papers. WATCH noted that the courtroom was very noisy at the time, with four other babies in the gallery.[20]

In the long delays between appearances, courtroom atmosphere often deteriorated. WATCH monitors consistently noted their concern about how courtroom chaos affected victims' sense of safety and defendants' understanding that domestic violence offenses were crimes that the system took seriously. During one chaotic period in court, a monitor noted, "If I were a victim, I'd want to run out of there fast."[21] Another monitor noted his concern about the routine casual conversation and joking, stating "Conversations may be held about any topic, any time, anywhere in the courtroom."[22] Occasionally, judges waited on the bench while the parties prepared for an appearance. This had a strong effect on the atmosphere in the courtroom. Personnel and others were generally quieter and businesslike when a judge was on the bench. Although clearly judges have no immediate control over conduct that occurs when they are not on the bench, they could provide leadership in establishing guidelines for courtroom conduct.

[18] Arraignment and pre-trial hearings on 8/21/01.
[19] WATCH frequently observed very young children and infants in the courtroom.
[20] Morning pre-trial and arraignment hearings on 6/4/01.
[21] Arraignment and pre-trial hearings on 1/4/01. On one occasion on 6/7/01, WATCH observed one defense attorney arrive in court, begin shuffling papers, then state loudly enough for observers to easily hear, "What's this crap. I really need to talk to this woman. This really sucks." Monitoring notes indicated that the courtroom was full of observers at the time.
[22] One monitor noted a group of attorneys chatting about recipes. Others referenced personal conversations about divorces and vacations. Notes throughout the monitoring period documented courtroom personnel whistling, joking loudly, eating popcorn, drinking coffee, watching a video on their computer, and shooting rubber bands. During one long break between appearances, a monitor referred to courtroom personnel engaged in a "telephone game" whereby they called each other back and forth on the telephones in the courtroom.

Judges can also provide directives for bailiffs (who remain in the courtroom even when a judge has left the bench) regarding maintaining courtroom decorum and safety.

C. DELAYS

The extended delays in the courtroom were frequent and often fostered a breakdown in courtroom decorum.[23] Although the domestic violence calendar indicated an official start time of 8:30 a.m., rarely did court appearances begin before 9:30 a.m. Even after court began, judges would frequently leave the bench, presumably because parties were not present or ready for their scheduled appearance. Some judges explained delays to those in the courtroom, stating that they would return when the parties were ready to proceed. Other judges left the bench with no explanation. During these delays, the courtroom always contained numerous criminal justice personnel and domestic violence advocates, some of whom worked while others remained idle.[24] Often, there were also defendants, victims, families, and observers sitting in the gallery. The following note from a WATCH monitor exemplifies a frequent experience in the court.

> This is an extremely frustrating day for me and everyone in court. Since 9 am. I have been waiting for the calendar. It is now 11:45 and I have seen about 45 minutes of active calendar. The rest of the time has been sitting around and waiting.[25]

The causes for these delays were often not clear to observers in the courtroom. At times, statements of courtroom personnel attributed delays to waiting for public defenders, interpreters, defendants, judges, court reporters, or lack of needed documents.

[23] Monitoring notes , for example, revealed the following scenario, "(Judge) is on the calendar, but not in court. (Judge) filling in. There seems to be a lot of confusion this morning because of the computer problem and a different judge. . . at about 11:15 this place turns into a zoo. Very noisy. Attorneys, advocates, bailiffs all talking. Can't hear. No attempt by bailiff to quiet the place down." Morning pre-trial and arraignment hearings on 6/19/01.

[24] WATCH began counting the criminal justice personnel who waited during these delays. Usually there were at a minimum two to three bailiffs, two to four city attorneys and support staff, two probation officers, one court clerk, totaling seven to ten government paid employees.

[25] Morning pre-trial and arraignment calendar on 6/13/01. A sampling from our monitoring notes reveals the following. On 6/12/01, after a brief start to the calendar, a delay occurred from 9:45 a.m. to 10:35 a.m.; on 6/13/01, court began at 10:20 a.m.; on 6/14/01 court started at 9:30 a.m., then a delay occurred from 9:40 a.m. to 10:40 a.m.; on 6/22/01, court began at 10:05 a.m.; on 6/29/01, court began at 10:15 a.m.; on 6/27/01, a delay occurred from 10:55 a.m. to 11:30 a.m.; on 7/6/01, a delay occurred from 10:40 a.m. to 11:05 a.m.; on 7/9/01, a delay occurred from 9:30 a.m. to 10:20 a.m. and again from 10:45 a.m. to 11:25 a.m.

C. BAIL AND RELEASE DECISIONS

WATCH was concerned that bail setting and defendant release practices varied considerably depending on which judge was presiding at the court. WATCH monitors were also frequently concerned about judges setting low or no bail as a condition of the defendant's release from custody in cases where the assault was particularly violent, there were specific risk factors present in the case, the defendant had an extensive criminal history, and/or the defendant had a record of failing to follow court orders.[26] WATCH noted cases where judges' inquiries prior to setting bail focused more heavily on the defendant's job status, income, and ability to make bail than on factors that might predict victim and public safety. WATCH monitors were frequently surprised at the lack of any kind of reference to violence by any courtroom personnel during the processing of many of these domestic violence cases.[27] All these factors contributed to WATCH's impression that more attention to victim safety was warranted at this stage of the proceedings.[28]

In Hennepin County, judges set bail and conditions of release for a defendant at the arraignment hearing. This hearing is usually the defendant's first appearance in court on any particular charge.[29] According to Minnesota law, the release of a defendant at that hearing shall be

[26] One volunteer noted in her general comments after a morning of monitoring misdemeanor arraignments, "Another thing is that so many of the defendants are being NBR'd [no bail required]. (Judge) seems to NBR anyone who didn't extensively injure someone. Unless the injuries are severe, the defendants are NBR'd. And, if the victim is OK with contact, then they seem to be automatically NBR'd." Morning pre-trial and arraignment hearings on 7/17/01.

[27] One monitor commented that it was difficult to discern that the court was handling domestic violence cases since violence was rarely mentioned.

[28] During the course of its monitoring, WATCH learned that specific court practices at other stages of the proceedings may be jeopardizing victim safety. For example, WATCH learned that pre-sentence investigation reports (PSIs) are not ordered in all cases as required under Minnesota statute 609.2244. These reports review defendants' histories and circumstances and assess the risk offenders present to victims; therefore, it is extremely important that the judge review the PSI before sentencing the offender. Though it was difficult to discern the extent of this problem through court monitoring, the probation department's records indicate that PSIs are not consistently ordered. See *2001 Domestic Referrals Breakdown*, interim statistical summary presented to the Family Violence Coordinating Council, July 12, 2001.

[29] See MINN. STAT. § 629.72. Prior to the first appearance in court, defendants go through a similar procedure at the jail where the sheriff sets bail and releases a defendant if bail is paid. The decision to release a defendant pending arraignment rests with the Sheriff's Department. Other Minnesota jurisdictions keep domestic violence offenders in custody until they can appear before a judge. Such policies better protect public and victim safety since, presumably, jail personnel have less access to information about what risks an offender presents than court personnel. WATCH noted several cases in the domestic violence court where the bail was substantially raised from the amount set at the jail based on more complete information about the facts of the case. One example was State v. Anderson Clarke,

conditioned on his re-appearance at the next hearing or trial.[30] In determining bail and other conditions of release, Minnesota rules state that a judge shall consider a variety of factors including the nature and circumstances of the offense charged, the defendant's character and mental condition, his record of convictions and record of appearance at court proceedings, and the *safety of any other person or of the community.*[31] In addition, 2001 legislation enhances Minnesota Statute section 629.72 to make clear that judges must review the facts of arrest and detention to determine whether releasing a defendant is a threat to victim or public safety and make findings on the record in this regard.[32]

WATCH was concerned that judges did not have complete information about the safety risk presented by a defendant at the time bail was set and a decision regarding release was made. In most cases observed by WATCH, judges appeared to receive a pre-trial release evaluation form for each defendant appearing at arraignment that referenced many of these factors. However, monitors noted several instances where judges did not have these forms or criminal history data at the time of arraignment. Also, during interviews conducted by WATCH, some judges noted their own concern that they did not have enough information at arraignments to adequately assess the safety risk presented by offenders. One judge noted in an interview with WATCH that, unless judges were diligent about requesting certain information, they might not have it.[33] WATCH observed many hearings where judges were not informed of the "facts of arrest and detention" until they asked for the information.[34]

Case # 01057836 on 7/16/01. The judge raised bail from the $1200 set in jail to $4800 and took the defendant into custody upon hearing the facts of the case. According to the victim's statement to the court, the defendant had called the victim's parents and told them he was going to buy a machete and chop her up.

[30] MINN. STAT. § 629.72 Subd. 2 and MINN. RULES CRIM. P. 6.02 Subd. 1.

[31] MINN. STAT. § 629.72 and MINN. RULES CRIM. P. 6.02 Subd. 2.

[32] The new language of the statute states, "In making a decision concerning pretrial release conditions of a person arrested for domestic abuse, harassment, violation of an order for protection, or violation of a domestic abuse no contact order, the judge shall review the facts of the arrest and detention of the person and determine whether: (1) release of the person poses a threat to the alleged victim, another family or household member or public safety. . ." MINN. STAT. § 629.72.

[33] WATCH interview on 2/14/01.

[34] For example, in a case where the city attorney did not request bail or describe the circumstances of an assault, the judge indicated concern about a similar charge in Anoka County with the same victim. The city attorney read from the police report only when the judge requested it. The report indicated that the victim said the defendant was angry because she wanted to leave. "[H]e told her to shut up and pushed (sic) her in the face with a closed fist and put her in a headlock." State v. Randy Strom, Case # 01041969 on 5/21/01.

In some instances, it was not clear that judges were aware of the significance of the information before them and thus they could not use it appropriately to assess victim safety. One example of this was the uneven treatment judges gave to information that an assault had involved 'choking' or 'strangling' of the victim. Research demonstrates that this type of assault is an indicator of extreme danger to a victim.[35] At least one judge had no knowledge of this research (based on an interview with WATCH). Other judges seem to give no weight to this information when considering bail and release. In one case the judge released a defendant without bail despite charges that he put the victim in a headlock, knocked her to the ground, got on top of her, and while he was choking her stated, "You won't get away with this. I will kill you."[36]

Misconceptions about the dynamics of domestic violence seemed to influence some judges. Several judges made statements that suggested their belief that alcohol was the cause of the defendant's violent behavior and that treatment for alcohol abuse would eliminate the risk to the victim.[37] In fact, research demonstrates that domestic violence is not caused by abuse of alcohol and that sober defendants may present a dangerous risk to victims.[38]

Following are examples of cases where the court's release and bail decisions did not appear to reflect victim safety or offender accountability as a priority**.** These cases involve decisions from three different judges.

[35]One author notes, "Today we know that strangulation in one of the most lethal forms of domestic violence: unconsciousness may occur within seconds and death within minutes. Victims may have no visible injuries whatsoever – yet because of underlying brain damage by lack of oxygen during the strangling – victims may have serious internal injuries or die days or several weeks later." In at least one state, the criminal code allows prosecutors to charge a defendant who strangled someone with felony assault with a deadly weapon even when the only physical signs of the assaults are redness on the neck or throat pain. See discussion of strangulation and California law in Gael Strack and George McClane, *How to Improve Your Investigation and Prosecution of Strangulation Cases*, National College of District Attorneys, 2000.

[36] State v. Christopher Pozniak, Case # 01058043 on 7/17/01. See transcript at p. 3.

[37] In the case referenced in the preceding paragraph, the judge stated, "He's got a lot of alcohol related stuff, and I think that's apparently his problem." See transcript at p. 4. In another case with a different judge, the city attorney requested $1200 bail and noted the visible injuries to the victim documented in the police report. Ordering that the defendant be released without bail, the judge stated, "And if he is sober he is probably safe in the community. So if we have him on the Alco-Sensor or breathing in our machine on a daily basis, we will probably be safe from him won't we?" State v. Monico Romero Lopez, Case # 01046737, arraignment on 6/7/01. See transcript at p. 4. In a case where the police report stated (according to the city attorney) that the victim had bite marks and bruising and scratches on her neck and that the defendant punched the victim with a closed fist, the judge ordered as a condition of the defendant's release that he not use alcohol, explaining that it is alcohol that "starts this." State v. Lance Willis, Case # 01072870 on 9/4/01.

[38]Joan Zorza, *Recent Research on Batterer Self-Esteem and Alcohol Consumption*, DOMESTIC VIOLENCE REPORT , June/July 2001.

State v. George Bell, Case # 01054844 on 7/5/01: Bell was arraigned on charges based on the following information contained in the police report: When officers arrived in response to a 911 call, the victim was extremely distraught, crying and shaking. The victim said that it was her birthday today and the defendant was jealous that she had been talking with a male neighbor earlier that evening. While they were arguing about this, the defendant became physically and verbally abusive. The defendant punched the victim with his closed fist on the left side of the victim's upper cheek. The officer observed this injury, which looked swollen and appeared to be fresh and bruised. The victim stated that the defendant then bit her on the same side of the cheek a little lower towards her jaw. The officer also observed this injury and saw fresh teeth marks on the victim's jaw. The victim also stated that the defendant took a lit cigarette and burned her on her right wrist. The officer observed a fresh blister/burn on the victim's right wrist. Children were present in the home at the time of the assault. Criminal history data revealed that the defendant had been charged with two assaults and one disorderly conduct in less than one year. *Bail and release decision:* The judge set bail in the amount of $1200.

State v. Charles Stead, Case # 01054907 on 7/5/01: Stead was arraigned on charges based on the following information contained in the police report: Officers received a call from a witness stating that a male was beating up a female. When they arrived, the victim reported that her boyfriend was angry at how long she had been away from the apartment. Without saying anything to the victim, the defendant punched her with a closed fist to her left jaw then grabbed her by her dress and ripped the right shoulder of the dress. He then pushed the victim to the ground and kicked her in the left knee, which left a small cut that was bleeding. The defendant had an extensive violent and non-violent criminal history including 12 assault charges dating to 1993. *Bail and release decision:* The judge released the defendant on $100 cash bail.

State v. Reginald Hayes, Case # 01058042 on 7/16/01: Hayes was arraigned based on the following incident described in the police report: The victim reported to police that the defendant began to assault her by knocking her to the floor and continuously kicking her in the stomach. She stated he also was hitting her in the face and bicep area with closed fists. The victim stated that as she was knocked to the floor and the defendant was kicking her in the stomach, one of his friends attempted to get him off of her, at which time the defendant said "f___ this bitch. I'm sick of her." The victim stated that when she began to leave, she saw the defendant come after her so she began to run down the alley, at which time the defendant tackled her and again continued to hit her in the chest/stomach area with closed fists. *Bail and release decision:* The judge ordered that the defendant be released without bail. According to the WATCH monitor, the hearing "took about 10 seconds."

State v. George Conrad Robertson, Case # 01072855 on 9/4/01: Robertson was arraigned on a charge of assaulting the victim by punching her in the mouth. The defendant had three previous domestic violence convictions involving the same victim.

He was the sole supporter of his three children. The city attorney asked for $3600 bail. *Bail and release decision:* Citing his concern for the children, the judge ordered that defendant be released without bail

State v. Giezwa Anderson, Case # 01058070 on 7/17/01: Anderson was arraigned on charges related to an assault against his girlfriend. At the arraignment, the city attorney described details of the incident as reflected in the police report. The city attorney described how the victim "got into the car and wanted to call 911 from the cell phone, and the defendant beat on the car and climbed inside and grabbed the cell phone from her . . . then he went into the house and he kicked the door and pulled the phone out of her hand as she was about to dial 911." The police report noted that the victim had an infant child with her and officers observed a mark on the victim's left knee and a lump on the back of her head. Her glasses were broken in the assault. The defendant had a criminal history in Hennepin County, including previous convictions for assault and for aiding and abetting in a rape. The city attorney requested $5000 bail. *Bail and release decision:* The judge ordered that the defendant be released without bail

E. NO CONTACT ORDERS

Judicial demeanor and practice when issuing no contact orders varied dramatically among judges. WATCH was concerned that too often victim safety was not thoroughly taken into consideration when deciding whether or not to issue a no contact order.

The judge has the discretion to issue a no contact order at the time of arraignment as one condition of the defendant's release pending resolution of the case.[39] The purpose of a no contact order is to protect victim safety by keeping offenders away while the case is proceeding through court.[40]

Violations of no contact orders were constant and routine in the domestic violence court. Not only were violations the subject of many court appearances, they also occurred regularly in the courtroom, hallways, and between the time defendant was released from jail and when he appeared in court. Again, responses to these violations varied greatly between judges.

[39] Also, prior to arraignment, when the defendant pays a bail bond and is released from jail after arrest, it is common practice for the jail to issue a no contact order.

[40] As one author states, "The vast majority of defendants in domestic violence cases are released prior to trial, usually on their own recognizance. The victim is especially vulnerable during the pre-trial period, when the defendant may try to retaliate for her role in having him arrested, or threaten her with more violence if she cooperates with prosecution. The court can protect the victim during this period by restricting the defendant's access to her as a condition of pre-trial release." Goolkasian, at p. 4.

1. Judicial Demeanor when Issuing No Contact Orders

The manner in which no contact orders were issued varied greatly among judges. Some judges were very careful to make eye contact with defendants and explain the orders carefully, firmly, and loudly enough for all participants to hear, ending by inquiring whether the defendant understood the order. These judges appeared serious about their orders, sometimes commenting that there would be consequences if the orders were broken. Research indicates that judges can have an impact in deterring future violence simply in the way they talk to the parties.[41]

In one case where allegations against the defendant included shattering the victim's windshield on her car, the judge stated, looking directly at the defendant,

> You are to have no contact with the victim. Do not follow her around, do not send her messages. If you see her, walk in the opposite direction. Even if the victim changes her mind – I'm not going to change *my* mind. This order comes from *me* not the victim. She is not in a position to make court orders.[42]

Reiterating the point that the no contact order comes from the court, not the victim, this judge in another case stated, "She does not have a black robe on."[43] At the time the judge issued this order, monitors noted six people in the gallery listening to the judge's firm and serious demeanor. In another case, a defendant asked a different judge, "She said she doesn't want contact with me?" The judge responded firmly, "I don't know if she said that or not, I'm ordering it."[44] With this statement the judge made clear that the order came from the court, not the victim, reducing the risk that the defendant would blame or retaliate against the victim for sanctions he received in court.

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[41] One study found that "[J]udicial warnings and/or lectures to defendants concerning the inappropriateness and seriousness of their violent behavior apparently improved the future conduct of some defendants." Goolkasian, at p. 4, citing Barbara E. Smith, *Non-Stranger Violence: The Criminal Court's Response*, National Institute of Justice, Washington, D.C., 1983.

[42] State v. Mario Chizelle, Case # 00108912 on 5/21/01.

[43] State v. Anthony Breedlove, Case # 01023030 on 5/21/01. Later in the day when issuing a no contact order, this judge again made clear that the no contact order "comes from the court and it doesn't change until the court says so**."** State v. Frank Tyrone Whitehead, Case # 01035997 on 5/21/01.

[44] State v. Charles Krefting, Case # 01067813 on 8/21/01.

Some judges issued orders in a passive manner—not looking at the defendant, looking down, talking quietly, and sometimes shuffling papers. Monitors often reported that it was very hard to hear judicial orders of all kinds. One WATCH monitor noted that one judge allowed herself to be interrupted by the defendant when issuing a no contact order. Another judge allowed the clerk to give details of the no contact order. Another judge allowed the defendant to turn his back toward the bench while the order was issued. All of these behaviors appeared to diminish the authority of the court and thus the strength of the order.

2. Decisions Whether to Issue No Contact Orders

WATCH noted a wide variety of practices among judges regarding the decision whether or not to issue or continue a no contact order. Some judges undertook what appeared to be an independent evaluation of the risk an offender presented to a victim. For example, in one case where the defendant allegedly assaulted his wife, 12-year-old daughter, and 16-year-old son, the wife appeared in court and expressed her desire for contact with the defendant. The city attorney noted that there were visible injuries to the daughter. After careful consideration of the police report, the judge ordered that the no contact order stand, despite the wife's statement.[45]

WATCH noted cases where judges did not appear to engage in an independent evaluation of the risk of harm to the victim other than to hurriedly inquire what the victim wanted. One morning during arraignments, WATCH noted two instances where the judge asked the city attorney if she had received victim input regarding the no contact order. In both cases the victim was sitting in the gallery. In response to the judge's inquiry, the city attorney rushed over to the victim in the middle of each hearing and spoke briefly with her. (WATCH noted that both conversations took less than one minute.) The city attorney then reported to the judge that the victims agreed to contact. There could be no mistake in these situations by anyone, including the defendant, that the responsibility for the order being issued lay squarely with the victim. Also, while WATCH appreciated the judge's efforts to assure that victim input had been received, we were concerned

[45] State of Minnesota v. Erskine Morrison, Case # 01050730 on 6/22/01. Another judge in another case responded to the city attorney's statement that the victim wanted contact with a request to review the police report. Referring to the allegations in the police report and a previous malicious punishment of a child conviction, the judge made clear that the defendant could have no contact with the children. State v. Willie Jones, Case # 01042010 on 5/21/01.

about the reliability of that input in such rushed circumstances with the defendant present in the courtroom.[46]

WATCH noted cases where the only information the judge received about the victim's wishes was from the defense attorney. WATCH was concerned about whether victims were receiving appropriate advice and assistance in these cases. Advocates also reported their concerns about contact with victims by defense attorneys prior to the hearings.

One judge stated her policy clearly in a case where the city attorney requested a no contact order, despite the victim's statement that she was agreeable to contact. Interrupting the city attorney's explanation of the risk presented by the defendant, the judge stated, "Let me stop you right there. If the victim wants contact, I am going to allow it. I am not making the victim a victim twice, so okay, so I am granting an NBR (no bail required)."[47]

In another case involving a violation of a no contact order, a defendant who was in custody was gesturing and mouthing words to the victim sitting in the gallery of the courtroom.[48] The city attorney explained to the judge that the defendant, or a third person at the defendant's instruction, had called the victim from jail "less than fifteen minutes" after he had been ordered to have no contact with her.[49] Though we have, of course, no record of what the defendant said to this victim, it is cause for concern that in a matter of a few days, the victim had changed her statement that she was very fearful and wanted no contact to asking that the no contact order be lifted. The judge did vacate the no contact order.[50]

[46] Arraignment hearings observed on 9/4/01. In another pre-trial appearance for a different case, a different judge said nothing about a no contact order. When the court clerk reiterated the no contact order, the city attorney noted that the victim was in the courtroom and that she had asked that the no contact order be lifted. In fact, the victim and the defendant were sitting in the courtroom together. Upon request, the judge immediately lifted the no contact order without further inquiry or admonishment for violating the order in the courtroom. State v. Alberto Santos, Case # 01040100 on 6/4/01. Similarly a different judge dropped a no contact order after asking a victim sitting in the courtroom with a defendant if she feared for her safety. State v. Rion Sanders, Case # 01055000 on 7/6/01.
[47] State of Minnesota v. Francisco Bautista, Case # 01058013 on 7/17/2001.
[48] State of Minnesota v. Billy Johnson, Case # 01060183 on 7/26/01.
[49] Id., 7/26/01 hearing transcript at p. 3.
[50] Id. ,7/26/01 hearing transcript at p. 5.

These judicial responses did not appear to take into account the multitude of factors, many of which should be of primary concern to a judge, that might be influencing a victim's position on the issuance of a no contact order. For example, research shows that it is common for offenders to retaliate against a victim who turns to the criminal justice system for help.[51] Courts should at least consider the possibility that the victim's statement to criminal justice personnel that she approves contact with the defendant prior to arraignment may be the result of fear or intimidation by the offender.[52]

3. The Parameters of No Contact Orders

Judicial practice explaining the parameters of no contact orders varied extensively among judges. Some judges were explicit in their orders—outlining exactly what the no contact order meant and where it applied.[53] Other judges gave absolutely no verbal explanation of the meaning and parameters of a no contact order**.** One judge even refused when the city attorney requested the judge to give details of the order. WATCH also observed instances where judges appeared to overlook or ignore the city attorneys' requests for details about a no contact order.[54]

Judges varied in their willingness to allow certain kinds of contact. At times, these variances seemed to be carefully tailored to the circumstances. For example, one judge allowed telephone contact between a victim and a defendant who worked in the same building and their job

[51] According to one author, "As many as half of all batterers threaten retaliatory violence and at least 30% of batterers may inflict further assaults during the predisposition phase of prosecution," Randal B. Fritzler and Leonore M.J. Simon, *Creating a Domestic Violence Court: Combat in the Trenches*, COURT REVIEW, Spring 2000, citing Robert Davis et. al., *Victim Witness Intimidation in the Bronx Courts*, New York Victim Services Agency, 1990, and Stephen Goldsmith*, Taking Spouse Abuse Beyond a 'Family Affair'*, 17 LAW ENFORCEMENT NEWS 7, 1991.

[52] Speaking about the need for independent investigation of cases by police, Lt. Don Harris, head of the Minneapolis Police Department's Family Violence Unit, noted, "The victim is terrified by the offender and unwilling to cooperate. Sometimes they give an alibi for the offender." Zack, at B1.

[53] One monitor wrote "Judge explains no contact clearly, explains no face-to-face contact, no contact through a third person, and to stay away from the house. Then he asks the defendant if he understands the condition of the no contact." State v. Thongbay Vongpheth, Case # 01055908 on 7/9/01. Another judge explained, "No contact means don't call her, write her, contact her by mail, or have anyone else contact her." When the city attorney requested that the judge explain in detail the requirement that the defendant not contact the victim by writing to her, the judge emphasized that aspect of the order in detail. State v. Shelton Williams, Case # 01070087 on 8/23/01.

[54]Examples of this include: In State v. Jorge Criollo, Case # 01051459 on 6/22/01, when the city attorney asked the judge to emphasize the importance of no physical violence, the judge did not respond. In State v. Frank Britten, Case # 01033684 on 6/7/01, when the city attorney asked the judge to make clear that the defendant should stay away from the victim's parents' address, the judge did not respond.

responsibilities required contact. However, it was the common practice of another judge to allow telephone contact without stating any particular reason why. WATCH observed other judges allowing telephone contact as well. Another judge stated when issuing a no contact order at an arraignment that the order meant no contact in person, but writing to the victim was not prohibited. The written order form used by Hennepin County District Court to detail conditions of release, including a no contact order, states clearly that direct or indirect contact with victims by mail, telephone, and third persons is prohibited.

There appeared to be no consistent policy on whether no contact orders were enforced in the courtroom. As discussed in the next section, WATCH regularly observed violations of no contact orders occurring in the courtroom.

F. VIOLATIONS OF COURT ORDERS AND OTHER CHALLENGES TO JUDICIAL AUTHORITY

Defendants' repeated violations of court orders were a constant subject of court proceedings, and should be of primary concern to any judicial officer overseeing the domestic violence court. As one author stated, "Greater judicial oversight of perpetrator behavior **and imposition of significant sanctions for violations of court orders** should be the hallmark of a domestic violence court."[55] Judicial tolerance of these violations risks demeaning the authority of the courts. If there are no consequences for violating court orders, the orders themselves become meaningless, and both offender accountability and victim safety are sacrificed.[56] WATCH observed a wide array of judicial responses to repeated violations of court orders.

Some judges demonstrated through demeanor and/or substantive rulings that they were serious about court orders. In one case, the defendant appeared in court after being arrested for

[55] Amy Karan et al. Another prominent expert, Casey Gwinn wrote, "[F]ailure to abide by conditions of probation or complete a batterers intervention program should result in swift and significant consequences from [Municipal Court] judges," at p. 7.

[56] A city attorney described the problem of the defendant's violating court orders as, "The word on the street has to be if they violate an order, they have to sit in jail. Follow-through is critical." WATCH interview on 6/29/01. A probation officer emphasized how critical judicial handling was in cases of repeat offenders. "When defendants violate probation, or no contact orders, the judge needs to impose correctional consequences. They need to give the defendant the idea that there will be concrete consequences for violating an order." WATCH interview on 6/28/01.

contacting the victim in violation of his probation. The judge stated her policy of honoring a sentencing judge's order to hold a defendant without bail in cases of probation violations.[57] In another case, this judge explained to a defendant, "If you fail to abide by any of these conditions, your remaining jail time will be imposed. I will direct that this case will come back to me."[58] This judge refused to release another defendant without bail stating, "I won't conditionally release you because you failed to comply with your probation. If you have any further offenses or violations of order for protection or violations of probation, you will do the full time of 90 days. This is not a threat but I want you to know the rules. Do you understand this?" The judge then stated to the clerk of court, "If there are any violations, I want this to come back to me because of what I just stated." [59] In this case, WATCH monitoring notes indicated that the effect in the courtroom was "palpable."

In contrast, WATCH also observed numerous instances of judges allowing defendants who violated court orders to have "one more chance." This particular phrase was frequently used by judges, according to WATCH monitoring notes. Currently, full hearings on violations of probation do not take place in the domestic violence court. These hearings are assigned to any judge on the general court calendar. This practice presents an obstacle to the court's goal of offender accountability. By structuring proceedings so that an offender appears before the same judge who sentenced him, greater offender accountability would be achieved.

WATCH monitors regularly observed violations of no contact orders occurring in the courtroom. There appeared to be no consistent judicial or courtroom policy regarding these violations. For example, in one case, the defendant came into the courtroom, sat down in a chair in the gallery next to the victim, and appeared to fall asleep embracing her. The city attorney approached the two to reiterate the no contact order. The victim moved a few chairs down. The defendant remained in his chair apparently sleeping. The judge did not appear to notice the situation.[60] In addition to contact in the gallery of the courtroom, WATCH consistently observed defendants who were in custody attempting to and often succeeding in making contact with the victim

[57] State v. Dwayne Carter, Case # 00046963 on 8/23/01.
[58] State v. Orlando Davis, Case # 00486404 on 8/23/01.
[59] State v. Jeffrey Hayes, Case # 00293855 on 8/23/01.
[60] This incident was observed on 5/9/01.

through gesturing and mouthing words through the glass.[61] Most often judges continued with the task before them, taking no notice of or action towards this inappropriate courtroom behavior.

Other judges firmly enforced no contact orders when they were violated in the courtroom. In one case, the city attorney stated to the judge that the defendant was in direct violation of the no contact order by sitting next to and talking with the victim while awaiting his appearance. The judge stressed the importance of the no contact order, stated that the orders are to be taken seriously and that no contact means "just that." The defendant was taken into custody.[62] In another case, a different judge took the defendant into custody for violating a no contact order by approaching the victim in court and by contacting her prior to his courtroom appearance.[63]

WATCH noted other instances of courtroom behavior that appeared to challenge or demean judicial authority. WATCH monitors noted several instances of defendants interrupting or challenging judges. For example, after one judge ruled that the defendant be held in custody for a violation of probation, the defendant stated loudly, "You have a funny way of handling things. It takes forever to do things. It's ridiculous." The judge quietly responded by explaining how busy the courts were. While WATCH appreciated the firm consequence for violation of the court's order, it was concerned that instead of admonishing the defendant for this disrespectful behavior, the judge appeared contrite .[64] In one case, a pro se defendant told a city attorney that he was leaving the state and would not comply with any court orders. This statement was reported to the judge, who said nothing .[65]

[61] In one case on 8/21/01, a defendant was brought into the courtroom by bailiffs to await his appearance. He immediately started to glare at the victim in the gallery and mouth words to her. The deputy approached the victim in the gallery and told her not to have contact. Nothing was said to the defendant.
[62] State v. Dorian Brown, Case # 01004841 on 2/5/01. When this defendant was released later in the day pending a sentencing hearing the next day, the judge emphasized that the no contact order was still in effect and detailed the meaning of the order, stating clearly that the defendant could not initiate any physical or telephone contact with the victim. Further, he stated that if the victim initiated any type of contact, it was the defendant's responsibility to end the contact by walking away or hanging up the phone.
[63] State v. Steven Jovaag, Case # 00916554 on 8/27/01.
[64] State v. Anthony Conner, Case # 00777598 on 7/9/01.
[65] State v. Jessie Campbell, Case # 01046687 on 6/29/01.

IV. RECOMMENDATIONS

The creation of a misdemeanor domestic violence court in Hennepin County is a significant step in improving the criminal justice system's response to domestic violence cases by making victims safe, communities safe, and offenders accountable. Such specialized courts have many advantages: consistency in case handling, expertise in judges and court personnel, accountability for offenders and the system, accessibility for parties. To fully realize these advantages, policies and procedures should be consistent and predictable, with offender accountability and victim safety at their core. WATCH offers the following recommendations for steps to further improve the court's response to domestic violence cases.

Commitment to a dedicated bench: Create a dedicated bench of no more than six judges in the domestic violence court. Establish a regular meeting schedule of these judges to create a forum for ongoing discussions about uniform practices and policies, problem solving, and other vital communication. Establish ongoing training on current research about domestic violence and effective criminal justice system responses.

Courtroom Decorum: To establish clear expectations for the decorous operation of the court, develop and distribute guidelines that clearly reflect and support an overriding respect for the court and its orders. In particular, policies and procedures should be established which permit systems personnel—including prosecutors, defense attorneys, bailiffs and clerks—to do their work without disrupting the proceedings. Bailiffs should consistently enforce courtroom rules. Judges and courtroom personnel should always use microphones to enable all participants to hear clearly.

Safety: Develop guidelines that clearly establish a no tolerance policy for violations of no contact and protection orders, and that set a tone of safety and respect in the courtroom. In particular, this means that no contact and protection orders should be enforced in the courtroom

and in the surrounding hallways, and appropriate and consistent sanctions should be imposed for any violations. Guidelines should be developed that address appropriate methods of communicating with the victim in the proceeding (for example, as related to no contact orders or bail) so as not to create the perception that the victim's input is the sole cause of the court's order.

Delays: Identify the most prevalent causes for delays in courtroom proceedings and develop a plan of action with systems personnel—including prosecutors, public defenders, probation officers, advocates, and courtroom staff—to address those causes and eliminate delays. The court should re-evaluate the official start time for the court and determine if that time is realistic in light of the participants' preparation time (such as communicating with defendants and victims) and the logistics of transporting in-custody defendants. In the event of a delay, judges should acknowledge the delay on the record and explain its cause.

Bail and release of defendants: Develop written bail and release guidelines that incorporate the language of recently enacted changes to Minnesota law which require judges to review the facts surrounding the arrest and detention of a person arrested for domestic abuse, harassment, violation of an order for protection, or violation of a domestic abuse no contact order.[66] In accordance with the law's new language, the judge should make findings on the record, to the extent possible, concerning whether the release of the defendant poses a threat to the alleged victim and the likelihood that the defendant will fail to appear at subsequent hearings. Develop guidelines regarding victim input at arraignment hearings. These guidelines should address whether and when the court will accept statements from victims.

No contact orders: Develop guidelines regarding the issuance of a no contact order in circumstances where the victim has stated that she approves of contact. Implement measures to ensure, to the extent possible, that the victim's statement was not coerced and that the victim had received appropriate advice and assistance from an advocate prior to making statements relied on by the court.

[66] MINN. STAT. § 629.72.

Judges should make a clear statement to the defendant about the parameters of no contact orders, for example, where and when they apply. Judges should clarify that the order prohibits contact by any means including contact by phone, mail, electronic communication, or through another person. Judges should clearly state that orders remain in effect regardless of the defendant's incarceration or bail status, and that a victim's statements or actions cannot nullify the court order. The standard order form currently used by Hennepin County should be amended to incorporate these details. If a judge departs from the standard order, the reasons for doing so should be stated on the record.

V. CONCLUSION

The new Hennepin County domestic violence court creates a remarkable opportunity for judges, as the court's leaders, to improve the system's handling of domestic violence cases. WATCH's monitoring study in the court confirmed that the impact judges can have on achieving offender accountability and victim safety—stated goals of the new court—is profound. We are hopeful that our recommendations can contribute to further improvement of the court.

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Report issued: November 15, 2001