



## Providing Feedback to Your Courts

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### **WATCH's Mission**

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

## INTRODUCTION

This guidebook was created to help you improve your courts. In it you will find tools and strategies for providing accurate, effective feedback to members of your justice system. You will learn ways to communicate directly with justice system members, as well as how to use tools like newsletters, reports, and projects.

Since 1993, WATCH has been monitoring Hennepin County Minnesota court cases involving domestic violence, sexual assault, and child abuse. We also provide extensive training and technical assistance on court monitoring to individuals and programs across the country. *For more information, visit [www.watchmn.org](http://www.watchmn.org).*

In speaking with project staff and volunteers from these programs, we often hear that programs rarely, or *never*, contact members of the justice system about their observations. WATCH believes that respectful, ongoing communication with the court is crucial to accomplish our mission, and we regularly contact members of the justice system to share observations from our monitors and offer feedback. This guidebook was created to help you do the same.

*Providing Feedback to Your Courts* will help you answer the following questions:

- What preparation is necessary before providing feedback?
- What issues will your feedback address?
- What is the best way to approach the court in a given situation?
- Depending on the response, what options are available for follow-up?
- How and when is it best to file a formal complaint?
- How can newsletters, reports and projects be used to provide feedback?

The quotes and examples included in this guidebook are based on WATCH's monitoring of the courts and interactions with court personnel in Hennepin County, as well as examples shared with us by court monitoring programs from around the country. While many of these tips and examples are geared toward judges, they are applicable to all members of the justice system. In addition to judges, WATCH monitors and provides feedback to clerks, court reporters, advocates, attorneys, probation officers, and sheriff's deputies.

Finally, in addition to this guidebook, WATCH offers a *Providing Feedback to Your Courts* webinar, as well as manuals, additional guidebooks, tipsheets, training, and technical assistance. You can find information on these and many other resources at [www.watchmn.org](http://www.watchmn.org).

We wish you the best of luck as you move forward in your work to improve your courts and hope this guidebook serves as a helpful tool in that process.

## FIRST THINGS FIRST: BUILD RELATIONSHIPS

The first step to improving your courts is getting to know the individuals who work there and understanding their functions and roles within the system. This is critical as individuals and court monitoring groups can only make recommendations to the court, they cannot implement changes. If your relationships with justice system members are positive overall, and court personnel know your organization, they will see you as a credible partner in helping to improve the system and will be more likely to listen to your input and recommendations. If your relationship with the courts is adversarial, or your organization lacks credibility, your recommendations will simply be ignored. For this reason, we highly recommend you take time before you begin monitoring to lay the groundwork for later communications.



### Ready Resource

Building relationships with court staff is so critical to improving the courts that WATCH devotes an entire chapter to the topic in our *Developing a Court Monitoring Program* manual. The manual also includes chapters on developing your program structure, data management, working with volunteers, etc. *You can order a copy of the manual at [www.watchmn.org](http://www.watchmn.org).*

Once your program is established, your focus will be on maintaining relationships. Here are some examples of ways to build and maintain relationships with criminal justice system staff:

- Speak on the role of court monitoring at orientation for new judges.
- Contact new judges personally to introduce your program.
- Participate in local court committees and task forces. You gain credibility when you show a willingness to help get things done.
- Join statewide coalitions and work in partnership with advocacy and community groups to achieve common goals.



### From Our Experience

We want people to trust that our reports and recommendations are not swayed by our relationships with court staff. So, we do not allow public officials to donate money or volunteer with WATCH, including serving on our board of directors. If you plan to monitor your courts, consider the importance of clear conflict of interest guidelines.

Building relationships takes time and is ongoing. The more contact you have with court staff the more opportunities you have to create and sustain relationships. Don't be shy. Think creatively about ways to make court staff aware of your program or project.

Another way to forge relationships between your project and local legal system members is by partnering with an established organization that already has credibility in your community. Examine your goals, resources, and strategies and align yourself with like-minded groups.

Court monitoring organizations around the country have partnered with local chapters of:

- League of Women Voters
- National Organization for Women
- Jewish Women International
- YWCA
- Retired Senior Volunteer Program

Monitoring programs have also partnered with:

- Local city and county domestic violence/sexual assault task forces and committees
- Citizen's groups
- Churches
- Health agencies
- Domestic violence and sexual assault shelters and advocacy groups

### **Is contact with court personnel *ex parte* communication?**

An *ex parte* communication occurs when a party to a case, or someone involved with a party, talks, writes to or otherwise communicates directly with the presiding judge about the case without the other parties' knowledge (*ex parte* is a Latin phrase meaning "on one side only; by or for one party"). Judges may not permit or consider *ex parte* communications in deciding a case unless expressly allowed by law.

One judge in our jurisdiction expressed the opinion that communication from WATCH constitutes *ex parte* communication and should therefore be discouraged. Because of both the nature and timing of our feedback to the courts, we disagree with this interpretation of our role (as do most judges in our district). Independent court monitoring organizations such as WATCH are not parties to individual cases; we do not represent or advocate for individuals. In most cases, we do not contact judges about matters that are pending before them, but only report on court rulings after cases have been adjudicated. If you or your organization is confused about *ex parte* communications, consider contacting an attorney for clarification.

## DECIDING WHAT TO ADDRESS

Deciding what to address will depend on the goals of your organization and how your courts are structured. WATCH's work is guided by the belief that the justice system is accountable to the public and that the public has a right to observe the process. Much of our feedback is given to influence the way justice system members conduct themselves, reminding them to be respectful and fair to all parties. In addition, we keep the importance of victims' rights uppermost in everyone's mind. Finally, we expect our legal system to meet certain basic standards, including:

1. Upholding the rights and dignity of all participants, regardless of race, gender, class, sexual orientation, language, or nationality
2. Sending a clear message that violence will not be tolerated
3. Acting in a professional and respectful manner
4. Taking into account victim and public safety
5. Holding offenders accountable
6. Fairness and consistency
7. Following the law

Many court monitoring programs, including WATCH, start out monitoring only one or two variables. For example, WATCH initially documented whether hearings started on time (e.g., are the courts respectful of victims and family members waiting for hearings to begin?). We also noted whether cases were heard on the record in court, or in the judge's chambers behind closed doors (e.g., is the process open and transparent?).

To determine your initial priorities, review your mission statement and resources (e.g., number of staff and volunteers available). As you build your knowledge of the courts, additional issues will arise, and as you have more resources, you will be able to address them. Once you have identified the overall issues you will monitor, you can create a framework for deciding when to bring a particular instance to the court's attention.

WATCH gathers information about the courts by training community members to be volunteer court monitors. When monitors complete their shift at court, we hold a debriefing session in which we review the forms they have completed and discuss their observations.



### **From Our Experience**

If an issue is raised that needs to be addressed, we bring it to a weekly staff meeting where we discuss options. In rare cases, an issue requires an immediate response from the executive director.

In either case, WATCH uses the framework below to decide whether to take action.

**Does addressing the issue fit within the scope of our mission?**

Regularly examining what you are doing to ensure it aligns with your organization's mission provides an important focus to your work. It will help you stay true to your purpose and show you when things are outside of your sphere.

**Is further research or investigation needed before we respond?**

Be certain you have complete, factual information before responding. If necessary, meet with the monitor to ask clarifying questions, request a court transcript, or speak with an experienced ally in the justice system. You may find valuable information or a fresh perspective to inform your actions.

**What do we hope to gain from the interaction?**

Key to deciding whether to respond to a particular issue is being clear on the desired result. Do we hope an individual will change their behavior? Do we want to encourage a new policy or procedure? Choose the approach that is most likely to lead to the outcome you want.

**What past action(s) have we taken on the issue? How recent were our attempts? What were the results?**

We recommend you maintain records of correspondence with justice system members so you can track your communications and their outcomes. If it is necessary to raise an issue again, you can reference previous actions, which will help you build on your successes and avoid repeating mistakes. This will also show you when it is time to employ a new strategy to address an ongoing problem.

**For individual feedback, how do we think the person will respond?**

Have they been open and receptive to past feedback? Is this situation similar, or is this a hot button issue for them? Is the person more receptive to office visits, e-mail, or phone calls? Answering these questions will help you determine the best approach. You should also consider what you will say and do if the person is unreceptive to feedback, or in the worst case, hostile toward you. In those circumstances, further direct contact will likely be unproductive, and you will want to explore other options.

**Is this an appropriate time to provide feedback?**

Are there extenuating circumstances that would cause you to hold back on giving feedback until another time?



### **From Our Experience**

To avoid the appearance of influencing the outcome of a particular case, WATCH refrains from providing feedback until a case has been resolved. Exceptions are rare, for example, when a monitor noted a clerical error had been made that would have dramatically reduced a defendant's bail allowing him to go free, or when a monitor overheard someone in the elevator confront a witness about lying under oath.

To avoid the appearance of bias for or against a candidate for judicial office, we do not make public comments about their handling of cases during an election. In addition, if a major restructuring is underway, we may postpone commenting on a current practice and wait until the change has been in effect for several months. At that point, we may comment on whether the change has had the intended effect, or whether more needs to be done.



### **Quick Tip!**

WATCH does not endorse judicial candidates or provide voter guides. We co-sponsor a judicial candidate forum whenever a judge faces an election opponent. A comprehensive *Guide to Creating a Judicial Candidate Forum* is available on our website. WATCH also advocates for greater judicial transparency and non-partisanship in Minnesota, and is currently involved with the *Coalition for Impartial Justice* which seeks to prevent big money from unduly influencing judicial elections. You can learn more about the *Coalition's* work at [www.mnbar.org/impartialjustice](http://www.mnbar.org/impartialjustice).

### **Is the issue important enough?**

There may be times when *not* responding to a situation is the best course of action. Years ago a monitor returned from court concerned about the casual atmosphere between proceedings. Attorneys were discussing summer vacation plans and the previous night's baseball game. The conversations happened between proceedings, often with only the monitor in the gallery, but the monitor felt it was inappropriate in that setting.

WATCH's executive director asked a judge whether she thought this type of situation warranted action. She responded that, although court was a public space, attorneys were not able to retreat to their offices between hearings. Their jobs were stressful and these conversations helped break up the tension of their day. In addition, she felt there were bigger problems facing the court and we should save our efforts for more serious problems. We decided that unless a conversation includes derogatory comments about a party to a case we would not respond to it. The *Newsletters* section describes how we address these conversations.

## Is feedback necessary?

As we have discussed, providing feedback is useful for reporting on patterns of behavior. For that reason, we recommend reserving feedback in situations involving isolated incidents, unless the behavior is so egregious you feel you have to respond. Similarly, if you observe something that is troubling, but then learn the justice system member was aware of their behavior, there may be nothing to gain by you contacting them. Two examples from WATCH's experience highlight these dynamics. In one we gave feedback, in the other we did not. How might your program respond in a similar situation?



### **From Our Experience**

A probation officer supervising a long-term violent abuser inadvertently left a derogatory note about the probationer in the court file. The defendant's attorney found the note and brought it up in court. The probation officer was extremely embarrassed. She immediately apologized to the defendant and the court. She then went back to her office and called her supervisor to explain and apologize.

We did not contact this individual or print an account of the incident in our newsletter because the probation officer realized her mistake and apologized. If this was a pattern of inappropriate behavior, if she refused to take responsibility for her actions, or if it represented a larger trend at court, we may have taken a different approach.



### **From Our Experience**

A judge approached a WATCH monitor in court to ask her whether she was the victim in an upcoming case. When she told him she was with WATCH, he immediately became embarrassed and apologized to her, realizing he had assumed since she was African American that she was a party to a case (racial disparities in Minnesota's criminal justice system have been well documented.) See, for example, data from the Council on Crime and Justice, [www.crimeandjustice.org](http://www.crimeandjustice.org).

We printed an account of this incident in our newsletter for three reasons: 1) to acknowledge the judge for following one of our recommendations, e.g., checking in with people who are waiting to provide them with information about their cases; and 2) to reward him for recognizing and correcting his bias; and 3) to remind others to be aware of similar biases.

## Does the concern reflect the organization's priorities?

Even if it meets the above criteria, ask how the issue fits with your other priorities. Remember—you do not have to respond to everything.



Finally, you may receive requests to respond to something that occurred when you were not present. Although these requests may be compelling, WATCH refrains from providing feedback on cases that our monitors have not observed. In these cases, we tell the caller why we are declining to respond, and may encourage individuals to contact the courts themselves. If interested, we are happy to give them ideas on how to do so.



### **Quick Tip!**

Many court monitoring programs decide not to provide direct feedback at all, opting instead to issue recommendations via a report, on a website, or in a newsletter (we discuss these strategies later in the manual).

The following are examples of issues WATCH has addressed in the past, followed by the monitor note that brought it to our attention.

#### **Safety in the courtroom**

*Multiple volunteers noted deputies going in and out of hearings, saying that they were responsible for several courtrooms at the same time, and sitting behind partitions doing paperwork.*

#### **Discussion by the judge of issues unrelated to a case**

*During the hearing, the judge inquired about the respondent's mental health, including his medication and diagnosis. When the respondent told the judge that he thought it was irrelevant to the case, the judge replied, "It isn't [relevant]. I'm just curious because I've had my own mental health problems. I've been hospitalized for depression and I know a lot of people close to me have it." The judge continued the conversation and the exchange about medication and dealing with depression.*

#### **Inappropriate jokes**

*During a hearing to amend an order for protection the judge stated, "I've been married 45 years. We've never considered divorce, a few times murder maybe."*

#### **Does the behavior warrant praise?**

In addition to noticing the things that need improvement in your court system, it is equally important to notice and acknowledge the things that are going well. This demonstrates that you recognize peoples' efforts, are aware of the progress that is being made, and want to give praise when appropriate.

Praise reinforces positive change and encourages people to keep working to make things better. You can offer praise privately via letter, e-mail, or phone, or

publicly by contacting someone's supervisor, writing about it in your newsletter or, as WATCH does once each year, presenting an award to someone who has made exceptional strides towards improving the lives of victims of violence. WATCH believes court personnel should be held to high standards, so we reserve praise for individuals who go above and beyond their job descriptions, as in the following example:

**E-mail to judge**

*...[C]ourt monitors have consistently returned with positive notes regarding your demeanor. We continue to be impressed with the care you take to ensure participants are aware of and understand what is happening. Your consistent communication and caring, thoughtful demeanor positively effect both the courtroom environment and the overall experience of participants.*

This judge's response provided interesting insight into his style and demeanor and opened the door for future interactions:

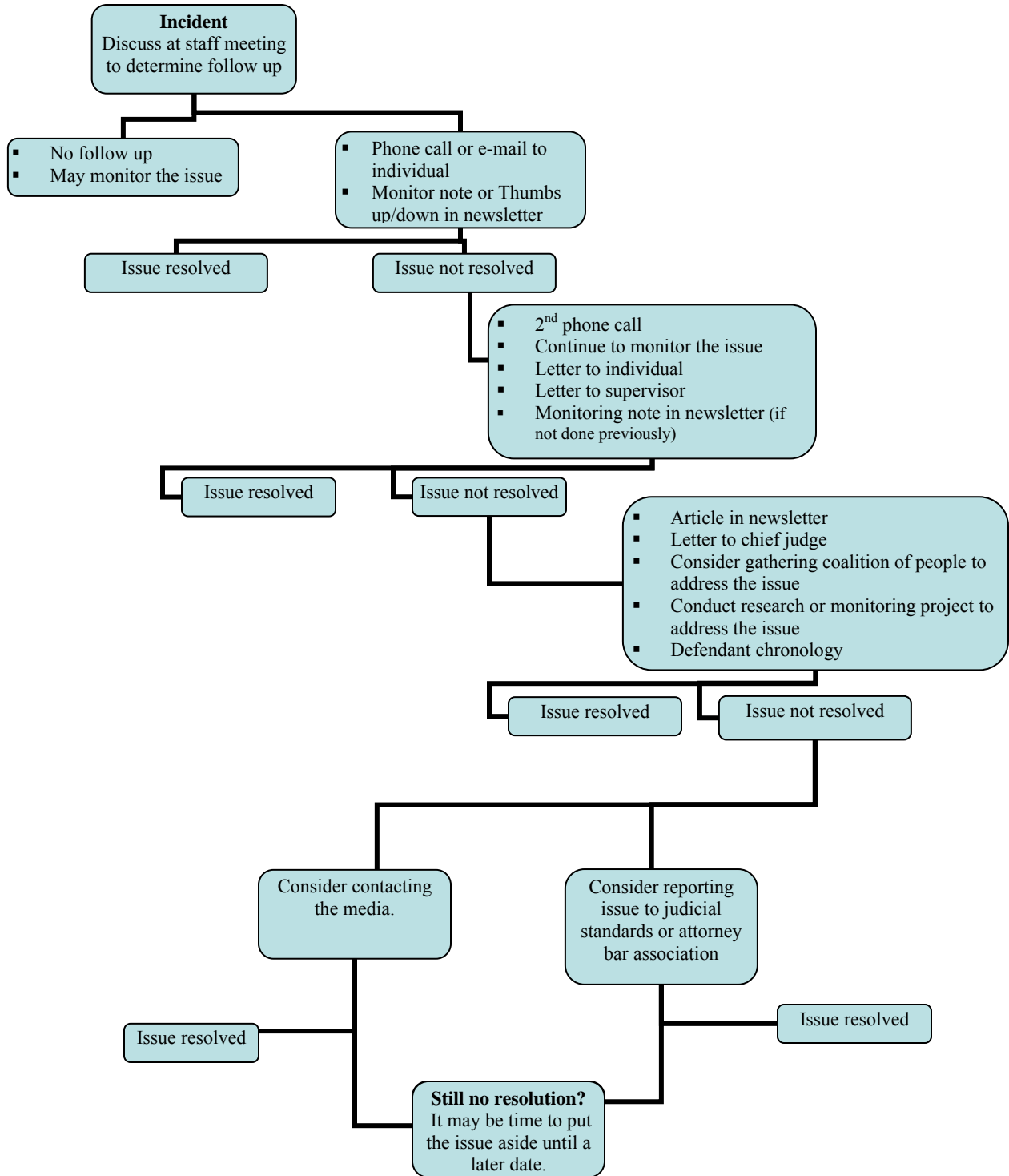
**Judge's response**

*Thank you for your kind words and the feedback from your monitors. Speaking as a relatively new judge, I can say that oftentimes the things that a judge does and says on the bench flow out into a vacuum and there is seldom any echo back to see how one might improve. If you ever see anything from me on the bench in terms of demeanor, courtesy, or conscientiousness to the job, please feel free to let me know. I welcome feedback that may help me be a better judge.*

**CHOOSING HOW TO RESPOND**

The flowchart on the following page outlines the steps WATCH takes when providing feedback, and shows how we move forward to the next level of intervention. It is followed by a thorough discussion of each of the approaches we use.

# Flowchart for WATCH Case Response



The following list encompasses the most common approaches you might use to provide feedback to your courts. The first three involve direct contact with an individual, while the last four utilize more public avenues. We will address them in the following order.

- Phone call or e-mail
- Meeting
- Letter
- Filing a formal complaint
- Newsletter article
- Report or project

Sometimes your interventions will overlap or happen simultaneously. For example, you may choose to both address an issue directly with an individual by phone or email and also publish a more general article on the subject in your newsletter. Similarly, if you file a formal complaint against a judge, you may also contact media outlets or distribute a press release explaining your decision.

After deciding the best approach to use, determine who from your organization will make the contact. This will depend on your organization's size, structure, and history. For example, if you have an all-volunteer organization and your program's founder or board chair is well connected in your community, s/he may be the most effective spokesperson. If you have a paid staff person, the responsibility will fall to them. In a larger organization, there are more options for who can fill that role—a program director or the executive director are both likely choices. Others—staff members or volunteers—may help gather background information or make preliminary inquiries, but the formal contact will carry the most weight if it is made by the leader of your organization.

When considering strategies, ask yourself these questions:

*What is it that I want to accomplish?  
Will this strategy accomplish that goal?  
What are the potential negative outcomes?*

At WATCH, our goal in providing feedback is three-fold: 1) to learn more about how and why a decision was made; 2) to express our opinion on how the decision affects the safety of women and children; and 3) to promote greater consistency in holding defendants accountable, particularly when they violate court orders.

Prior to taking action, we employ the following four steps to ensure our feedback is accurate. The steps are described in more detail on the next page under ***Phone Calls***. They include:

1. Verification
2. Preparation
3. Diplomacy
4. Follow up

## Phone Calls

If WATCH has a mantra for communicating with court personnel, it is “pick up the phone.” Although we employ multiple strategies, approximately 80% of our feedback and contact with court personnel is via phone or email. Both represent efficient ways to give and share information and we have found these lower level interventions to be the least threatening, most effective strategies for dealing with many issues.

Calling allows you to establish a personal connection. This may be especially important with someone you have not met or don’t know well. Your tone of voice and approach can also reassure the person of your openness or quickly clear up a misinterpretation or misunderstanding. It is effective in situations that require a lengthy discussion or when you have a lot of questions. Finally, use a phone call if you or the respondent is hesitant to put the concern in writing, for example if you are discussing a hot button issue or one that is controversial where either party may not want their views made public. It is much easier to keep a phone call confidential than written correspondence.

Despite all the benefits, many people are hesitant to call court personnel. Phone calls require you to think on your feet and you need to prepare for a range of responses. The following section will help you prepare using WATCH’s four step process.

### Step 1: Verify your facts

We cannot stress enough the importance of verifying information. There is always the chance that the person who observed the court interaction misunderstood what was happening or was lacking information, so be sure to gather all available information before contacting court personnel. This will save you embarrassment and preserve your credibility.

Verifying facts can be as simple as debriefing or double checking with the volunteer who monitored the hearing. You can also verify information by reading police reports or criminal complaints, searching the court database, contacting other people who were at the proceeding, or requesting transcripts (although this can be expensive). If you are not positive of the facts of the case or if there is room for interpretation about what happened, seek clarification. For example, comments related to demeanor can be very subjective. What one monitor sees as efficiency another may see as impatience. It may help to find out what someone else at the hearing thought about what happened.

### Step 2: Prepare in advance

This includes learning what you can about the person you are contacting and the issue you want to address with them. Before you call someone you don’t know well, consider gathering background information. Contact your allies in the system to find out if they have suggestions on how to best work with this person. You may learn something that

helps you negotiate the conversation, for example, that they are more receptive to e-mails or are more likely to respond to an executive director than a program coordinator.



**Fast Fact**

We are often asked if court personnel return our phone calls. Yes, they do! The vast majority (around 90%) of court personnel returns calls and responds to emails and letters. Many advocates are surprised to know that court personnel are interested in hearing the public's feedback.

To help you stay focused, you can write a draft of what you want to say or create bullet points for the conversation. It is also helpful to have one sentence that encapsulates your main point or target message. Then, no matter where the conversation goes you can always come back to it.

Step 3: Practice diplomacy

Sometimes, getting what you want on a particular issue may not be the primary goal of your contact with a justice system member. If you are not able to resolve the issue with one phone call, your demeanor and tone will set the stage for future interactions. You should approach these interactions with a sense of diplomacy and a willingness to listen and learn. The outcome may be that you gain additional information or valuable insights on how to proceed. You may also find that the problem is more complex and/or requires coordination with other court personnel or community agencies before it can be solved.

While you want to prepare for a range of responses, including hostility, you should note that most of your feedback, if delivered in a respectful and courteous tone, will be received without incident. Under no circumstances should you use threats or aggressive or accusatory language. There is never a reason to raise your voice or use profanity. If controlling your temper is an issue you should not be responsible for making these calls, and if you start to lose your temper you should politely end the call. A respectful, credible tone shows system personnel that you are reasonable, open to learning, and that your motivation is to improve the system, not win an argument.

Step 4: Follow up

Following up with an individual after a phone call (or any other interaction) is a helpful step that allows you to confirm any decisions that were made, outline next steps, thank them for their time, and/or diffuse tension. Follow-up also includes documenting the interaction for your agency records. The examples below from WATCH illustrate these two forms of follow-up:

**Excerpt from letter from WATCH executive director**

*I am writing to follow up on our phone conversation from earlier this week. While we may not be able to come to an agreement on what constitutes a hearing delay at Hennepin County District Court, I appreciate your perspective and am taking it into consideration as I develop my newsletter article. It will likely be mailed out in three to four weeks.*

**Sample call log**

*Called and left a message for [court clerk] regarding our volunteer's inability to hear the witnesses while they were testifying. She informed me that the courtroom does not have an electronic sound system. **Follow up:** When the trial reconvened the judge consistently asked witnesses to speak louder as there was no sound system in the courtroom.*

**Sample call log**

*Called [prosecutor's supervisor] regarding our observations of [prosecutor] in juvenile court. The monitor note stated that "Prosecutor asked the judge to call the public defender and tell her to 'get her ass down here' and 'I like her but god damn it I don't want to sit around here waiting for her all day'." The supervisor expressed concern and stated she was going to speak with the clerk in court that day (to verify our monitor's observation) and the prosecutor who made the remarks.*

**E-Mail**

E-mail is a rapid form of communication that allows the recipient to read and digest the content before responding. It may also be the easiest way to get in touch with someone and/or gather information.

Creating the right tone can be more difficult, and e-mail may be more open to misinterpretation than a phone call. Something that sounds fine face-to-face may be perceived with confusion or hostility in writing. If you're concerned about being misunderstood you may opt to have a phone call or one-on-one meeting instead (see **Meetings** in the next section).

E-mails create a paper trail that, while useful for documenting a problem, depending on the issue may make court personnel hesitant to respond.

Finally, because of its casual nature, we recommend using e-mail more for information gathering purposes than to provide direct feedback, especially to people you do not know well. When giving formal feedback, we recommend writing an actual letter (see the **Letters** section on the next page).

The same four steps apply to e-mail communication that apply to phone calls: verify your facts, prepare a draft and edit carefully before sending, practice diplomacy, and follow up if necessary.

## Meetings

Face-to-face meetings are useful if, in addition to providing specific feedback, you will also be introducing yourself and your program for the first time; if you know the individual, but want to establish greater rapport; or if the issue you are trying to address is multi-faceted and/or complex.

Since you are requesting the meeting, it is helpful to estimate how long the meeting will take (most should be shorter than 20 minutes) and offer them the convenience of meeting at their office. This also allows you to get to know them on a more personal level; you can meet the receptionist or clerk, ask about pictures, or comment on books (one judge we visited had a pile of WATCH newsletters on his desk, an indication that he was already familiar with our work).

Again, verify your facts ahead of time and prepare what you're going to say. If it is an introductory meeting, bring program information, such as an agency brochure or newsletter, which you can briefly review and then leave with them.

Always start by thanking them for taking the time to meet with you and acknowledging their busy schedule. It is then helpful to pose the issue in two parts, starting with describing what the monitor observed and your concern, and then asking for their perspective on the situation. Face-to-face interactions provide the opportunity for thoughtful pauses and silences between questions. Use pauses to take a moment to integrate their responses and decide how to proceed.

For example, the individual may point out roadblocks to dealing with the issue that you were unaware of. Or, as has sometimes happened with WATCH, they may have already thought back on the incident and decided to handle it differently next time. Then again, they may have a very different perspective on the issue, and may disagree with your position. Even if an immediate resolution isn't clear, you want to leave the meeting feeling each party understood the other's point of view.

## Letters

In lieu of the steps above, you may choose to write a letter. Like e-mail, a letter gives the recipient time to digest the information and respond when they're ready. Letters also create a paper trail that documents what you are seeing as well as your attempts to resolve a problem.

If you are writing regarding a specific case, verify the facts of the case and include the relevant case data in your letter. If appropriate you can:

- Reference a specific statute if you feel it was not followed properly
- Quote from a monitor note gathered by the representative from your agency that attended the hearing
- Note the specific behaviors that caused concern



- Include a relevant reference or article on the topic
- Include a copy to their supervisor, the chief judge, or other relevant court representative

Seek assistance in drafting your letter (particularly if this is not your strong suit) and have several people read it prior to sending it. Do you want the person to follow up with you? If so, make that request and provide a timeframe. Such as:

*I would like to speak with you personally about this issue.  
Please feel free to contact me at your earliest convenience.*

-or-

*I will contact you within the week to discuss this matter further.*

You can also let the letter stand on its own without the need for follow up. This may be more appropriate for issues of demeanor. Such as:

*Our monitors have consistently noted the fast pace of your proceedings. We are concerned that petitioners and respondents may not fully understand the process if they do not have time to ask questions or clarify the details of the order for protection. Thank you for your consideration of this matter.*

The following are excerpts from letters that WATCH has sent to court personnel in the past. You may find language and/or phrasing that will prove useful to your efforts.

**From letter to Judge**

*I am writing this letter as a follow up to our recent telephone conversation in which I expressed concern regarding the questions you posed to the petitioner during the above referenced order for protection hearing. Specifically, I am concerned about your repeated inquiries into the petitioner's reasons for living with the respondent.*

*Increasingly, research shows that judicial conduct and demeanor sends a powerful message to both petitioners and respondents during order for protection hearings. The facts of this case clearly required a focus on the respondent's brutal behavior, which is the subject of a criminal proceeding, rather than the petitioner's choices regarding her living arrangements.*

*The attached article is an excellent articulation of the need for a criminal justice focus on the conduct of the offender, not the battered woman. I hope it is useful information. Also, I believe it is important to remember the extremely complicated decisions battered women must face in repairing their lives. It is impossible for those of us who have not experienced ongoing brutality from an intimate partner to understand the many far-reaching consequences, both financial and personal, of these decisions.*

**From letter to Prosecutor**

*I am writing to congratulate you on the outcome of the Gary Crawford case. WATCH volunteers and staff were present throughout the trial and pre-trial proceedings and repeatedly commented on your effective prosecution of this case. Because of your efforts, a dangerous man is no longer a threat to the safety of our community. Your hard work and dedication created a great deal of trust in our community's criminal justice system. Thank you for your efforts.*

**From letter to Judge**

*Congratulations on your appointment as co-chair of the Hennepin County Family Violence Coordinating Council. I have found the work of this council to be very productive and I very much look forward to working with you.*

*I have enclosed some materials I recently came across at a conference I attended. These articles and the diagrams all address general issues on judicial response to domestic violence. I found all of them quite helpful and I thought they might be useful to you and possibly other members of the bench. The diagrams are modeled after the Duluth project's power and control wheel, a graphic created to build awareness in the understanding of the dynamics of domestic violence. The wheel, adapted to judicial response, could be a simple tool to assist any judge hearing domestic violence cases. It was created by James Ptacek, who wrote the book, Battered Women in the Courtroom: The Power of Judicial Response.*

**From letter to Chief Public Defender**

*I am writing to follow up on a phone conversation between you and WATCH's volunteer coordinator regarding our monitor's feedback that two of the attorneys from the Public Defender's Office were overheard using derogatory terms to describe a prosecutor for Hennepin County. I have included the monitor's comments below:*

*"Between cases, I heard two defense attorneys discussing the prosecutor. In loud enough voices so that I could hear them, they called her a "bitch" and said she was "useless." A victim's father was in the gallery. It was completely inappropriate."*

*We felt our monitor's observations warranted a call to your office so that you have information about how your office is being represented in the presence of members of the public. We often publish monitor notes in our quarterly newsletter, the WATCH Post; we chose instead to provide you with this information so you can address it on a managerial level if you so choose.*

**Filing a formal complaint**

Depending on the issue, the individual, and the result of previous attempts, you may decide to file a formal grievance with a state or professional organization. Court employees are bound by different codes of conduct based on their position. Knowing professional codes of conduct for court employees can help you identify inappropriate behaviors, and you can reference the codes when communicating with court personnel or

filing grievances. For example, attorneys are members of state and/or local bar associations which have disciplinary procedures and sanctions for attorney misconduct; and every state has an agency or commission responsible for handling public complaints of misconduct by judges.

Filing a formal grievance with a state or professional association is usually a last resort, as it will likely result in an end to any further informal communication with this person. Depending on the person's standing in your community, it may also jeopardize your relationships with the person's supporters, including other members of the justice system with whom you have to work.

If your court monitoring project is part of an advocacy organization representing individuals in court, you will have to consider the risk of your advocates and/or clients being treated with hostility or facing repercussions from this employee in the future. If this is a measure you are considering, be sure you have exhausted all other possibilities for creating the change you seek, and review how you will handle a negative response from the justice system member, his/her colleagues, the media, and/or the public, including your supporters, before taking this step.

Before filing a formal complaint contact the professional organization for specific information on the types of complaints they accept, the process for filing them, the complaint review process, and typical outcomes. Before submitting a complaint, be sure your paperwork:

- Is clearly written and factual
- Addresses a specific rule or code
- Is devoid of sensationalized language or claims
- Includes any supporting documentation

The following section talks more specifically about the different professional organizations associated with court personnel.

### Judicial Misconduct

Judicial conduct boards (sometimes known as judicial inquiry commissions, commissions on judicial conduct, judicial standards boards, judicial review councils, etc) typically investigate issues such as improper courtroom demeanor or improper treatment of parties (counsel, witnesses, jurors, court staff and others); failure to promptly dispose of judicial business; conflicts of interest; chemical abuse; and engaging in improper election campaign activities. These organizations *do not* have the authority to review a case for judicial error, mistake or other legal grounds; these are the functions of appellate courts.



#### **Fast Fact**

In Minnesota the Board on Judicial Standards reviews approximately 125 written complaints per year. In 2009, the board requested that 24 judges respond in writing to a complaint against them and it further investigated nine complaints. Of these, six received private warnings, and one (less than 1%) received a public reprimand.

Be sure to research the rules and procedures governing the judicial complaint process in your state. Judges have rights related to information in the complaint and you, the complainant. Be sure you understand them before proceeding.



### **Ready Resource**

The American Judicature Society (AJS) is an independent, national, nonpartisan organization whose mission is to secure and promote an independent and qualified judiciary and fair system of justice. Among the resources you will find at their website is a state-by-state listing of contact information for reporting allegations of misconduct by state court judges. Visit [www.ajs.org](http://www.ajs.org) for more information.

### Attorney Misconduct

Each state has an entity responsible for handling attorney misconduct. This may be the state-wide bar association, special disciplinary commission, the attorney general's office, or the state Supreme Court. In addition, each state has professional codes for attorneys, most of which are based on codes developed by the American Bar Association. Disciplinary action may include private reprimands, public censure, or disbarment (permanent denial of the ability to practice law in that jurisdiction).



### **Ready Resource**

The American Bar Association's (ABA) *Center for Professional Responsibility* works to promote high ethical conduct and professionalism by lawyers and judges. Among the resources you will find at their website is a state-by-state directory of lawyer disciplinary agencies and professionalism codes. Visit [www.abanet.org](http://www.abanet.org) for more information.

### Other court personnel

In addition to attorneys and judges, the following court personnel have national associations with either codes of conduct, procedures for filing a grievance, or both. Even without grievance procedures you may find it useful to reference codes of conduct in your communications with the court.

#### Court Reporters and Legal Administrators

Both the *National Court Reporters Association (NCRA)*<sup>1</sup> and the *Association of Legal Administrators*<sup>2</sup> have codes of conduct for their members. In addition, NCRA has a formal grievance policy.

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<sup>1</sup> [www.ncraonline.org](http://www.ncraonline.org)

<sup>2</sup> [www.alanet.org](http://www.alanet.org)

### Probation Officers

The *American Probation and Parole Association*<sup>3</sup> has a code of conduct for probation and parole officers but does not have a formal grievance procedure.

### Court Interpreters

Each state has a process for handling grievances against court interpreters. Typically, this process is handled by the courts or another state entity. Visit your court website or contact your court administrator for the process in your state. In addition, the *National Association of Judiciary Interpreters and Translators*<sup>4</sup> maintains a code of conduct for court interpreters.

### Sheriff Deputies

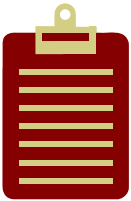
The *National Association of Sheriffs*<sup>5</sup> maintains a code of conduct for its members but has no formal grievance procedure. Each state's member program has its own code of conduct (typically modeled after the national code) but again, no formal grievance procedures.

While many of these organizations have no formal grievance procedures, becoming familiar with the mission and goals of the organizations can provide insight into addressing issues with members.

We have discussed communicating directly with court personnel via phone, email, in meetings and through letters, and in rare cases, how to file a formal grievance. The next sections include using newsletters, reports, and specialized research projects.

## Newsletters

If your organization has a regular publication, it can serve as a vehicle for providing feedback to your justice system. In this section we will focus on the two types of newsletter articles that WATCH uses most often to provide feedback to the courts: Volunteer notes and a “thumbs up and down” column.



### **From Our Experience**

Court personnel have told us that our newsletter is the one thing that everyone in the court system consistently reads and that it is one of our most powerful tools for improving the justice system. An archive of our newsletters is on our website at [www.watchmn.org/newsletter](http://www.watchmn.org/newsletter).

<sup>3</sup> [www.appa-net.org](http://www.appa-net.org)

<sup>4</sup> [www.najit.org](http://www.najit.org)

<sup>5</sup> [www.sheriffs.org](http://www.sheriffs.org)

## Volunteer notes

Excerpts from court monitoring notes provide a glimpse into the daily workings of the court that are useful for both the public (in learning how the courts operate) and court personnel (in learning how their actions are perceived). Few members of the public have regular interaction with the court and monitoring notes can educate people on how your courts actually work versus how they look on TV programs such as *Law and Order*.

Monitor notes highlight patterns of behavior, court decisions, and courtroom dynamics and demeanor.

When selecting monitoring notes to publish, choose examples that are representative of what your monitors see, notes that tell a particular story, or those that highlight an interesting point. Before publishing a note, always check for accuracy by speaking with the monitor to clarify the content, getting a second opinion from someone else who was there, or confirming with the public record or court transcript.

The following are examples of monitoring notes WATCH has included in its newsletters.

- ✓ During an order for protection hearing, the petitioner asked for the order to be dismissed. The judge suggested amending it to prohibit acts of violence, but to allow contact, emphasizing how all the acts alleged in the original petition were dangerous and against the law. She was very good at connecting with the petitioner and respectfully discussed the serious risk to the petitioner's safety, specifically addressing her pregnancy.
- ✓ A defendant asked for an interpreter. The deputy who brought him in commented, "He's lived in the U.S. for nine years, he should be able to speak English. If I lived in Mexico for nine years, I'd be able to speak Spanish."
- ✓ While I was waiting for a case to begin at the government center, the defense attorney and prosecutor were laughingly discussing the defendant's drug test results. When they went into chambers, the girlfriend of the defendant turned to me and said, "They just think it's funny, but they're toying with people's lives."<sup>6</sup>
- ✓ While waiting for a hearing to start, the defense attorney started shooting questions at the victim in the gallery about why she picked up the phone when the defendant called her. The victim was upset by the questioning, so the prosecutor told him to stop because she wasn't a witness. The defense attorney got kind of angry and said, "Fine, then we'll just get you a subpoena." The victim became visibly upset by this. Earlier, she told the prosecutor that she did not want the *no contact* order lifted and was sure the defendant would try to contact her if he was released.

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<sup>6</sup> WATCH uses volunteer notes to highlight demeanor issues that don't warrant more direct feedback, including comments such as this that are made during breaks.

- ✓ The judge in an order for protection hearing expressed concern that the allegations about to be discussed could be traumatic for the respondent's three-year-old daughter to hear. She worked with the mother to have the child wait in the hall with the clerk.
- ✓ A deputy in felony arraignment court was inconsistent in enforcing the rules. A little girl in the gallery was loudly running around and twirling in circles, yet the deputy said nothing to her parents. Meanwhile, the in-custody defendants were communicating with people in the gallery with no rebukes from the deputy. The deputy did, however, hush two men who were quietly whispering in the gallery!



### **Quick Tip!**

Are anonymous monitoring notes right for you? In jurisdictions with only a handful of employees, members of the public as well as justice system insiders will probably know who you're talking about even if you don't print their name. Ask yourself how this will be perceived. If the bailiff regularly falls asleep in court a note in your newsletter may prove very useful, but could also backfire if it is perceived as disrespectful finger-pointing. Talk this over with your colleagues to decide on the best strategy for your organization.

### Thumbs up and down

Another way to provide feedback is to include a Thumbs up/thumbs down, Cheers/Jeers, or other such feature in your publication. These columns can have a different tone than the rest of the newsletter, perhaps using irony or humor to make a point. Topics can be chosen for their broader implications or to point out egregious attitudes or actions. The following are two examples from WATCH newsletters.



### **Sample Thumbs Up**

*Thumbs up to the Hennepin County District Court clerk's office for instituting a new courtroom procedure following the publication of WATCH's latest domestic violence court report. At a recent domestic violence court steering committee meeting, the clerk's office announced it had developed a script that the clerk reads aloud before court explaining the following: what time proceedings start, how the calendar operates, how to obtain a copy of your rights, where to apply for a public defender, the rules governing no contact orders in the courtroom, who to speak to if you fear for your safety, information about interpreter services, and that proceedings are recorded. Bravo to the clerk's office for taking this simple and effective step towards clarifying the court process for all concerned.*



### Sample Thumbs Down

*Thumbs down to Judge Warren Sagstuen for his interpretation of Minnesota's criminal sexual conduct law in a recent case. The 33-year old defendant was charged with first-degree criminal sexual conduct for sexual contact, including penetration, with his 15-year-old half-sister. The law prohibits anyone to have sexual contact with a person under 16 years of age with whom they have a "significant relationship," which the law defines as "persons who are related by blood, marriage, or adoption including parents, sister, brother, stepbrother, stepsister, first cousin, aunt, uncle, grandparents, and others."*

*Despite this, the judge dismissed the charges, basing his ruling on the fact that the term "half-brother" is not included in the statute's list of "significant relationships." The prosecutor argued that "half-brother" is not listed as an example in the statute because it is included in the definition of "brother" in nearly all major dictionaries. The state is appealing the case, but that means a delay in resolving it, which prolongs the victim's ordeal and takes up valuable time of all parties. A more reasonable interpretation could have spared the victim further delays and saved valuable resources (\$3,000 for the prosecution alone) in a time of shrinking budgets.*

If you decide to use your newsletter to express opinions in this way, take care in selecting who and what to feature. For example, to avoid the appearance of bias, avoid singling out an individual for repeated praise or criticism. Some groups choose to shy away from making statements that could be construed as partisan, such as pointing out actions of a public official or government appointee. Others use the column to show supporters how specific policies affect their constituency and mission, as a way to educate people and encourage them to speak up on important issues when they have the chance.

When publishing information gathered from monitoring court, a key question is whether or not to publish the name of the justice system member. There are pros and cons, which we will outline below. WATCH has found that identifying specific court personnel is not particularly effective and we use this strategy sparingly. When deciding whether or not to identify an individual, we consider the following three points:

1. Most problems are system-wide and identifying one individual can take the focus off the larger issue and allow those in the justice system to dismiss your concern as a case of "one bad apple." You may be more likely to improve your courts by finding the answer to the overarching questions than directing the spotlight at one person.
2. Publishing a person's name related to something negative may create an adversarial relationship with that person, which could hinder your attempts to work with them in the future.
3. Publishing the name may not serve, or could defeat your purpose.



*Do you want people to hear first-hand examples of egregious behavior in your courts?*

This can usually be accomplished without identifying a particular person, but depending on the situation you may decide it is warranted, as WATCH did in the sample Thumbs down in the previous section.

*Do you want to bring public pressure to the issue and alert other court personnel to the problem?*

You can usually accomplish this without naming names.

*Do you want to use public scrutiny to pressure someone to change their behavior?*

We do not recommend using strategies that may seem or are vindictive or vengeful in any way. However, if you believe a particular problem really is isolated to an individual member of the court, public pressure may be a useful tool. It should still be done in a respectful and credible manner. This approach may be more effective if it is part of a larger strategy, such as requesting disciplinary action or filing a formal complaint, as described in the previous section.

## Reports and Projects

Publishing reports and disseminating data collected through research or special projects are two avenues for providing feedback on the justice system as a whole, rather than to an individual member of the system. Besides being able to target specific issues or courts over time, you provide the justice system with important data that may not be available anywhere else. This can be just the information someone needs to push forward with an important improvement. In addition to justice system members, you can also share this kind of feedback with your supporters and members of the public.

### Research and Monitoring Projects

Research and monitoring projects can be small (an in-depth look at one case) or large (examining hundreds of cases and their outcomes) and tailored to meet your specific needs (e.g. limited staff and/or budget). The following are some examples of research projects you could consider:

- Review a number of cases by examining their outcome or sentencing information
- Interview court staff on how budget cuts are affecting the public (e.g., fewer public defenders, reduced access to public records, fewer hours for public services, etc)

- Document the issues of safety at the courthouse
- Report on the impact of a specialty court, such as domestic violence or order for protection court, in increasing women’s safety
- Research statutes in other states compared with those in your state
- Track the impact of a new law or court policy



**Ready Resource**

WATCH has a wide variety of resources available to assist you in designing and implementing a project. Contact us for more information.

WATCH has published nearly twenty research reports since its inception, focusing on a wide array of topics including:

- ✓ The role of guardians *ad litem* in child protection hearings;
- ✓ Two projects examining how cases involving domestic assault by strangulation are handled, conducted one and two years after Minnesota passed a felony domestic assault strangulation statute;
- ✓ The role and use of victim impact statements at sentencing hearings;
- ✓ Judicial demeanor and response in domestic violence court; and
- ✓ A 21-month project comparing misdemeanor cases heard in Minneapolis’ designated Domestic Violence Court with those heard in three suburban court locations in our county

Project reports include an in-depth look at a specific court or issues, quantitative and qualitative analysis, and most importantly, recommendations for improving the system. *You can find a full list of WATCH research and reports at [www.watchmn.org](http://www.watchmn.org).* These projects are much more time intensive, and as in the case of the suburban court project described above, may require additional funding. However, because they contain comprehensive information gathered over time, they are useful in documenting patterns, and cannot be dismissed as anecdotal. In WATCH’s experience, they are one of the most effective ways for providing feedback that leads to changes in court practice.

A Judicial Feedback Project

In 2009, WATCH offered judges the opportunity to receive a quarterly summation of WATCH volunteer notes from their courtrooms for a year. Thirty one of 62 judges opted

to participate, and received feedback on a variety of issues. One judge responded as follows:

**Email from a judge:**

*I meant to write you earlier, regarding the Judicial Feedback WATCH sent out a couple of weeks ago. I appreciated getting it and reading it, and not just because it was mostly complimentary. It did feel very good to learn that the things I try to do right are noticed and appreciated. I might add that most of what I do in the courtroom (other than making decisions, rulings, etc.) is a direct result of WATCH observations about judges in general, and the need for us to let the public know what is happening. But I found the negative comments to be accurate as well, and they are now tucked away in my mind, hopefully to influence how I can present better in some instances.*

Defendant chronologies

Chronologies are written histories of a chronic offender's life of crime that highlight gaps in the criminal justice system response. WATCH introduced the concept with the publication of its first chronology in the *WATCH Post* newsletter in the early 1990s and has found it to be an effective tool for focusing the attention of the criminal justice system on needed changes.

Chronologies are time intensive, taking from one to three months depending on the complexity of the cases and your program's resources. However, because they include detailed information on every step in each criminal case, they create a picture of how each member of the justice system's actions affect case outcomes and show how the court system functions over time in relation to a specific individual. Thus, they are a way of compiling comprehensive information unavailable anywhere else.

For sample WATCH chronologies, go to [www.watchmn.org/reports](http://www.watchmn.org/reports). For assistance creating your own, go to [www.watchmn.org/training](http://www.watchmn.org/training) and click on *Guide to Creating Defendant Chronologies* which provides an overview of this process. WATCH also offers a webinar on this topic and we are available by phone or email if you need additional assistance.

**WHEN NOTHING WORKS**

It is important to note that there may be problems you are unable to fix. It may be impossible to remove a judge or change the way cases are handled in your court. Continuing to press forward on a dead issue is not only demoralizing but keeps you from addressing other problems that might be more easily fixed. Consider putting your issue aside for a while. Perhaps there will be an opportunity to address it at a later date, such as during domestic violence or sexual assault awareness month. There may be a change in

leadership that is more receptive to your concerns. There may also be a high profile case that draws attention to the issue at some point in the future.

Knowing when to pause, re-group, and/or change strategy is key when dealing with these complex issues. You will not be able to change everything at once and should not perceive yourself as failing if you are not able to create all the change you seek.

## CONCLUSION

We hope this guidebook provided you with new ideas and fresh insights into providing feedback to your courts and court personnel. Working to improve the courts can be challenging but it is necessary if we hope to achieve the ideals of a fair, just, transparent justice system. We wish you the best as you work to improve your criminal justice system and bring a public eye to justice.

## NEED HELP?

Please visit our website or call our office for information on training, technical assistance, manuals, guidebooks, and other resources. *Find us at [www.watchmn.org](http://www.watchmn.org) or call us at 612-341-2747.*