WATCH

Case Study Responses

Case Study 1: Limited Access to the Courts
Your organization has been monitoring child sexual abuse cases for over a year. You published a report about six months ago with recommendations to improve the handling of these cases. Since the report went public you have noticed that more and more court hearings are happening privately in the judge's chambers. On two separate occasions a judge has asked your volunteer monitors to leave proceedings. You are worried you may be doing more harm than good. What are your options?

From our experience:
You should start by trying to verify your perceptions. Contact your allies in the system and get their feedback about what is going on. You may be missing important information as to why things have changed and will want to know that before you go any further.

If you find out that you are correct there are a variety of paths to consider. You could contact the chief judge to talk about what is going on. You should first consider the judge's position on the issue. If you already know they will not be supportive you may want to spend your time and energy elsewhere. You could also follow up with another research project looking at the number of hearings that take place in judge's chambers and why these types of hearings are problematic. You could also highlight the issue in a newsletter article.

Finally, the public has the right to access the courtroom and you should train your volunteers on what to do if they are asked to leave. One option is to have volunteers leave when asked and then call your office so staff can decide if any follow up is needed. You may also want to provide your volunteers with a copy of the statute that spells out their right to access the courts so they are clear about what is permissible in your state.

Case Study 2: Identifying Individual Judges
You are about to publish a newsletter article about problems you are seeing at sexual assault sentencings. Your staff is divided as to whether or not to list individual judges names with cases. One staff member argues that without the names individuals won't be held accountable. Another argues that the entire system needs changing and focusing on one or two bad judges takes won't change anything. Should you name names or not?

From our experience:
To clarify, when we say "naming judges" we are referring to identifying judge's names in our newsletters and reports related to their action and decisions on the bench (if you work in a small jurisdiction with one judge or magistrate this case study may be irrelevant).

The goal of court monitoring should be to improve the system, not to humiliate or demean a judge. As you are deciding whether or not to name the judge, you should consider how your actions will be interpreted by the court system and if you are comfortable with the repercussions. Keep that in mind as you consider how to handle this issue. Here are some other examples of how we have handled this issue in the past:

When do we leave names out?

- Generally speaking, we do not name individual judges names, or any system personnel, when we are doing large research projects and reports. In those instances we are looking at the system as a whole and the high data volume makes it impractical to include names.

When do we name judges?

- When we write chronologies of repeat offenders for our newsletter we include the names of individuals involved to highlight the number of people working on each case as well as the specific decisions judges, prosecutors and defense attorneys make. Click here for an example: http://watchmn.org/PDF/Gallion%20chronology%20Final.pdf

- When we see particularly egregious and on-going behavior that we have not been able to address through direct contact with the judge or chief judge. In this case we might write an article about the incidents, citing the judge and their decision(s) and what we would like to see changed. Click http://watchmn.org/PDF/newsletterf05a.pdf and read the article, "Captured is Only the First Step" for an example.

WATCH's first course of action when dealing with a problem judge is to always contact the judge directly, not to put his or her name in our newsletter (imagine how you might respond if your supervisor published your yearly evaluation in the agency newsletter instead of giving it to you in person). This allows the judge an opportunity to hear our feedback and make any changes. If we get no response we may contact the chief judge. If that fails, we may consider writing a newsletter article about the issue or taking some other appropriate course of action.

Case Study 3: Difficult Clerks
You work in a small jurisdiction and are a new court-monitoring program. The only way you know to access the court calendar is to get a copy from the county clerk. She has been at her job for 38 years and does not like you. She will not allow you to make a photocopy of the calendar, citing privacy concerns, so one of your staff has to stand at a counter and write down all of your cases. Some days she even refuses to allow that stating, "I'm too busy to have you here today." You have instructed everyone to be polite to her but the issue has made it impossible to schedule volunteers. You have heard she likes brownies and are considering taking her some. How would you proceed?

From our experience:
WATCH has heard from many court monitoring programs with just this scenario. We do know of one program that takes their clerk brownies, but not to win her favor; she is very helpful to their program and they want to show their gratitude. You should not, however, have to beg or bake to get access to public documents. It makes sense to accommodate a busy clerk's schedule or reasonable requests (such as paying for copies or finding an out of the way place to read complaints). In turn, your monitors should be treated with courtesy and assistance.

One approach would be to talk to the supervisor in charge to discuss your needs and the problems you are having. You could draw up a memorandum of understanding or some other written document that outlines what you need. You could also have a meeting with the clerk, at a time when she is not busy, to talk about the problems, remind her of your right to access public records, and to discuss ways in which to make the process easier for everyone.

WATCH has worked with our county records office to get our own access code to the copier. We are able to make the copies we need and they send us a bill at the end of the month.

Case Study 4: Angry Judge Scares Your Board
There was a recent rape and murder of a woman in your community. The perpetrator was a recently paroled sex offender with a ten-year history of violence against women. The media called your agency and you were quoted saying that you hoped that your court-monitoring program would highlight the gaps in the system that allowed rapists to go free.

A judge in your jurisdiction wrote a letter to the editor lambasting your program, noting that you have no lawyers on staff, are run primarily by volunteers, and have no understanding about how things work at court.

Your board of directors had no idea court monitoring would bring this much scrutiny to your agency and they are worried about funding. They have called an emergency meeting to discuss the situation.

From our experience:
Prevention is the key here, in more ways than one. First, the more work you can do to educate your board of directors before an incident like this happens the better. Your board should not be caught off guard with this sort of information or with the methods you use to create change in the courts. The quote in the paper is absolutely appropriate. A woman was murdered because the system did not protect her from a violent perpetrator. Shying away from the truth will not create change.

You could try and schedule a meeting with the judge to talk about the situation and invite a board member along. Choose your board member wisely to be sure they understand the role of court monitoring and are supportive of your decisions. You could also respond with your own letter to the editor to the paper or a letter to the judge. You could also do nothing. Many people will disagree with you and that is just fine.

Ultimately though, you need the support of your board to do this work and if they are not prepared to handle the consequences of challenging the system you may need to rethink your strategies or consider if your board is appropriate for your mission.

Case Study 5: When Your Allies Are Angry
After a three-month project monitoring sexual assault hearings you publish a report highlighting major problems in all key areas from arrest and arraignment to sentencing. The chief judge, who was previously an ally to your program, calls your executive director furious that you did not share the findings with her before publishing them. She knew that there were problems and was working behind the scenes to deal with them. She says that you have undermined the process and no longer feels you are credible. How do you respond?

From our experience:
One way to avoid situations like this in the future would be to provide system personnel with early copies of your reports. That does not mean you change the report, however, but instead offer them a first look at the report and an opportunity to comment to you before it goes public. This approach provides court personnel an opportunity to digest the information before they start receiving calls about it.

One angry phone call will not topple your program or its credibility. It is likely that other people agree with your report and just haven't called you. The judge clearly agrees with you about the problems in the court, just not the manner you went about trying to fix them. If the judge is willing to share her information it would be good to know what steps are being taken to fix the situation. The judge's anger will subside and hopefully you can forge a good working relationship and fix some of the problems you highlighted.

Remember, when the bench calls it means that you have their attention—and that is a good thing!

Case Study 6: Overhearing Information in the Elevator
A monitor returns from court and says that he overheard a witness and the witness's girlfriend in the elevator. The girlfriend was questioning the witness about his testimony suggesting that he had not told the truth on the stand. The witness gave testimony that he saw the defendant at the location of the assault. The girlfriend said, "You're lying, you weren't there. Why'd you lie?!" Your organization has a policy of not intervening on individual cases. One of your colleagues states, "It is not our job to protect the defendant, that is his lawyer's job." What do you do?

From our experience:
The primary job of a court-monitoring program is to ensure that the system works and no one is served if the wrong defendant is convicted. Have a supervisor contact the judge and explain what the monitor overheard (calling the prosecution or defense may look as if you were favoring one over the other). Let the judge determine what to do with the information. If they would like to meet with your monitor a supervisor should attend as well. There is the possibility that the monitor could be asked to testify and you should be prepared for that. A similar scenario happened at WATCH. The judge and attorneys questioned the monitor without the jury present and decided not to admit the monitor as a witness.

Case Study 7: Appropriate Response
The court monitoring coordinator at your agency is responsible for contacting court personnel when issues come up that need to be addressed. She often ends up in an argument with the person she is talking to. Your agency is known for being vocal and passionate advocates for women and the tone of your monitoring program is to "hold people's feet to the fire." Your agency has recently stopped receiving invitations to the Sexual Assault Task Force meetings sponsored by the county. A prosecutor who knows and likes your program has told you that your tactics are alienating people who might otherwise be your allies. What should you do?

From our experience:
It is impossible to run an effective monitoring program if the person responsible for contacting the criminal justice system is unable to control her anger or frustration. You either need to provide the employee with training and information on how to handle the calls appropriately or remove her from her job. You also need to work on repairing any damage that has been done. Start by finding out from the prosecutor what suggestions she has to rectify the situation. You should also contact people in the system to let them know you are making changes to your program. Rebuilding a damaged reputation takes time, but is a learning experience that can make your program stronger in the long run.