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Effectiveness of Volunteer Guardians ad Litem:

What the Research Says

The utilization of volunteer non-lawyers as guardians *ad litem* or court appointed special advocates in child protection cases has expanded greatly in the past decade, both in South Carolina and across the nation. Following a brief introduction to this practice, this article will review the primary research studies which have examined the effectiveness of volunteers. These studies were not based in South Carolina, and this summary is not intended to reflect specifically on the effectiveness of volunteers in this state. However, models similar to South Carolina's volunteer guardian *ad litem* programs are encompassed in this research.

Background

Although not widespread in child protection cases until 1974, the utilization of guardians *ad litem* for children is well established in the law. The practice has roots in Roman law, medieval law, and English common law, when children were considered incompetent to file or defend against lawsuits. While in many situations the child's parent could step into this role, in child protection matters it is presumed that the parent's and child's interests will be in conflict.

With the passage of the first major federal child protection legislation, the Child Abuse Protection and Treatment Act of 1974 (CAPTA), guardians *ad litem* were required to be appointed for all children in child protection cases. CAPTA requires guardians to obtain first-hand knowledge of the child's situation and needs, and to make recommendations concerning the child's best interests. This was viewed by some as expanding the role of a guardian *ad litem* beyond courtroom advocacy. Specific duties of guardians were not defined in the Act, leading to varying interpretations in different states.

With the implementation of CAPTA, variations of three basic models of representation have developed across the nation. In one model, as in South Carolina, volunteers are appointed as guardians *ad litem*. Some of these programs have staff attorneys who represent volunteers while others rely on appointed attorneys for legal support. A second form is the selection of guardians *ad litem* from an appointment list of private attorneys who have no special training in child protection. This would be comparable to the practice in South Carolina, when volunteers are not available, of appointing attorneys from a rotating list. A third model is a staff attorney structure, similar to public defender offices, in which specialized, salaried attorneys assume the responsibilities of guardian *ad litem* for all cases. South Carolina does not have a program of this type in child protection cases. In some programs, when an attorney is appointed as guardian *ad litem*, a court appointed special advocate (CASA) is also designated. In this role, a volunteer is a "friend of the court" and performs many functions similar to those of a volunteer guardian *ad litem* in South Carolina, but is not a party.

A broad perception of the guardian *ad litem*'s role can pose dilemmas for attorneys appointed as guardians *ad litem*. While CAPTA requires promotion of a child's best interests, a potential conflict occurs for attorneys who, in other circumstances, are ethically required to represent a client's expressed wishes. In the *Standards of Practice for Lawyers Who Represent Children in Abuse and Neglect Cases*, promulgated by the American Bar Association, a preference for appointment as the "child's attorney" is expressed, rather than as guardian *ad litem*. If dually appointed as attorney and guardian *ad litem* and a conflict arises, attorneys are advised to withdraw as guardian *ad litem* and continue as attorney for the child. A second dilemma involves the issue of privileged communication. While an attorney-client privilege exists in all states, requiring attorneys to keep information confidential, there may not be a guardian *ad litem* privilege. In fact, courts have ruled that guardians *ad litem* must be available for cross examination.

The use of volunteers as guardians *ad litem* began in 1977 in Seattle, Washington. Judge David Soukup began utilizing volunteers in an effort to obtain more complete information on cases. The concept was endorsed by the National Council of Juvenile and Family Court Judges, and many other programs developed using volunteers who acted as guardian *ad litem* or in an adjunct capacity. In 1984, the National Court Appointed Special Advocates Association (NCASAA) was established to promote and support quality volunteer representation. NCASAA provides training, technical assistance, and educational materials; develops standards and recommended management practices; and administers a federal grant program for development and expansion of court appointed special advocate programs. Member programs number 840, totaling nearly 42,400 volunteers nationwide.

South Carolina was one of the first states to establish a state-funded program with enabling legislation. This program began in 1984 with a contract-grant between the Joint Legislative Committee on Children and the University of South Carolina. The program began in four judicial circuits in fiscal year 1984/85 and, through implementation of a five-year plan, was operational in forty-five counties in all sixteen circuits by 1988/89. Also in 1988, the South Carolina Legislature enacted S.C. Code Ann. §20-7-121 *et.seq.* (Supp. 1999) which mandates the operation of the program. This statute defines specific duties of volunteer guardians, establishes confidentiality requirements, provides qualified immunity, and sets forth those persons who may not be appointed. The state program is now a division of the Governor's Office and has 1001 volunteers with 2332 open cases.

The Richland County program, which is independent of the state program, operates as a department within Richland County government. This program began in 1983 through the efforts of the Junior League and later moved under the auspices of Richland County. A public-private partnership, the program is funded through a combination of county funds, grants, and donations. The Richland County Program operates under a policy to accept every case of abuse and neglect, and consistently maintains a caseload of just over 600 cases. When a volunteer is not available at the time a child's case comes to court, a staff member is designated to act on behalf of the child.

Introduction to Research

Although the utilization of volunteers to advocate for children in child protection cases has become prevalent, questions remain regarding the capacity of non-attorneys to effectively carry out this court-related role. A small volume of literature is now available to yield insight on the potential effectiveness of volunteers. Although the research has limitations, it has demonstrated that volunteers can function effectively and has provided information that could be used to improve volunteer programs. Some studies have focused on process variables, or procedural aspects of how guardians *ad litem* perform. These types of measures may not conclusively show that the efforts of guardians *ad litem* actually led to better outcomes for children. Other studies have looked at outcome measures, or the results thought to be attributable to the guardian *ad litem*. A troubling aspect of this approach is the assumption that certain outcomes are better for every child. In order to evaluate whether the actions

of the guardians *ad litem* were the determinative factors, comparison groups are often used. While groups of cases can be matched on a number of variables, such as age and type of maltreatment, it is difficult to accurately reduce the complexity of these cases to a list of measurable variables. Additionally, small sample sizes are relied upon in much of the research. Finally, the variety in volunteer roles and program structure may limit generalizability. In spite of inherent limitations, useful information has been produced. Four of the major studies are summarized below.

Duquette Study

Duquette and Ramsey conducted a demonstration project in Genesee County, Michigan, using a before/after comparative methodology and quasi-experimental design. Data were collected in 1981-1983. They began by conceptualizing the role of the guardian *ad litem* as an aggressive and ambitious advocate, who was concerned with the child's interests in a broad sense and provided continuous representation throughout a case. They then developed a curriculum and provided training to three demonstration groups: attorneys, law students, and lay volunteers. All three groups participated in training which included causes and dynamics of child maltreatment, the assessment process, children's developmental and psychological needs, identification of children's interests, and advocacy skills. Additionally, the volunteers received training on court procedure. They compared the effectiveness of each group to one another and to a control group of attorneys who had no special training. The control group consisted of 38 cases, and the demonstration groups totaled 53 cases. The same judge heard all of the cases.

Data were obtained through extensive interviews with the representatives and reviews of court records. Both process and outcome variables were examined. Process variables were measured by identifying and assessing the activities conducted by representatives. The interview instrument was designed to gauge the activities and approaches used, sources of information considered important, and attitudes toward the role. Four scales were used: (1) investigation/interaction, such as the number of sources contacted and the number of hours spent per case; (2) advocacy, which included the number of recommendations made, the services obtained, and people monitored; (3) motivation, which reflected whether they saw their role as important; and (4) the child scale, which looked at the amount of time spent talking with the child, the ranking of the child as an important source of information, and the degree of consideration given to the child's wishes.

For outcome measures, the impact of representation on the case was measured by looking at the actual management and disposition of the case as reflected in the court order. Court processing time, type of placement, visitation orders, and orders for treatment or assessment were considered. While acknowledging the difficulty in assuming that certain outcomes are always best for the child, the study defined "good" outcomes as shorter processing time, fewer court hearings, greater selectivity regarding the need for court jurisdiction, and greater attention to specific orders for placement, visitation, assessment, and treatment.

Among the demonstration groups, volunteers were much more likely to have talked with the child. Aside from this difference, a key finding of the study was the lack of significant difference among the three groups. In fact, the groups were so similar that they were collapsed and treated as one group for comparison to the control group. The demonstration models showed a significant improvement over the comparison group on the outcome measures, leading researchers to conclude that training is centrally important regardless of who the representative is. They concluded that carefully screened, trained, and supervised volunteers could perform as well as trained lawyers, and better than untrained lawyers. They recommended the use of nonlawyers in this capacity, with lawyer supervision.

Poertner & Press Study

Through a retrospective case file analysis, Poertner and Press compared an existing CASA program to an existing staff attorney program to address the question of whether lay volunteers could represent the interests of children as well as trained attorneys. The volunteers in this study participated in 25 hours of initial training, a 2-week internship, and continuing education. They were supervised weekly by a staff member and had access to legal advice. Cases opened and closed from 1984-88 in a large midwestern city were examined. The sample consisted of 60 CASA cases and 98 staff attorney cases.

Both outcome and process variables were included in this study. Outcome variables, which were selected to reflect stability and permanence, were: (1) length of time case was within the judicial system; (2) whether the child was living with parents, legal guardian, adoptive family, or other at case closure; (3) whether child stayed with abuser; and (4) whether the case re-entered the judicial system after closure. Process variables were aspects thought to contribute to speedy resolution of the case while continuing to focus on child safety. These variables were: (1) number of continuances; (2) number of placement changes; (3) length of time out of home until case disposition; (4) time from opening to initial disposition; (5) number of voluntary dismissals; and (6) number and type of services identified in court findings.

A comparison of process variables suggested that the volunteers and attorneys were similar. The differences were in the number of services (higher for the volunteers) and the time the child was placed at home (less for the volunteers). Children served by the CASA program spent an average of three months longer outside of their home, but this difference was not deemed statistically significant. In examining outcomes, no difference was found on three out of four variables. The primary distinction was that CASA cases resulted in significantly more adoptions than those served by the staff attorney model, a difference of 21.7% compared to 7.1%. This difference was not explainable from this study design.

The researchers concluded that, overall, the two programs were more similar than not in their handling of cases and in outcomes. Volunteers were found to perform at least as well as the attorneys. In fact, as a result of this study, the staff attorney program has added trained volunteers to its staff of attorneys and paralegals.

Litzelfelner Study

A quasi-experimental prospective design was used in this study conducted at two sites in Kansas. Attorneys were appointed as guardians *ad litem* in all cases and, in the study group, CASAs operating under a "friend of the court" model were also assigned. All children determined to be "in need of care" during a specific period were included in the study. The study group were those cases in which CASAs were assigned. A comparison group consisted of children who entered the system at the same time but were not assigned CASAs. The two groups were matched on age, race, and type of maltreatment. The researcher could not obtain permission for random assignment of cases to the two groups. Because judges may choose the more severe cases for assignment of CASAs, a "selection bias" could be present. A total of 119 CASA cases and 81 comparison cases were examined.

Data were collected from court and CASA program records every six months for a two-year period beginning in 1994. The outcome variables studied were: (1) case closure rates; (2) length of time children were under court jurisdiction; and (3) number of children adopted. Process variables were selected to reflect factors believed to lead to permanency for children. These were: (1) type of placements while in care; (2) number of court continuances; and (3) number of services provided.

No significant differences were found between the CASA and comparison cases on permanency outcomes. A significant finding of the study was that children with CASAs had significantly fewer placements while in care (3.9 compared to 6.6). In the CASA cases, more services were provided and fewer continuances occurred. Due to the potential selection bias, findings of this study cannot be conclusively attributable to the presence of a CASA. Arguably, if judges selected the more difficult cases for CASA assignment, and these cases turned out as well as the less difficult cases in the comparison group, this could mean that the CASA had a beneficial effect. If there had not been a CASA, one might expect the more difficult cases to have less desirable outcomes, but there is no way of knowing for sure from this study.

National Study

The largest study to date was initiated by the 1988 re-authorization of CAPTA, when Congress required that a national study be conducted on guardian *ad litem* representation for children. The U.S. Department of Health and Human Services contracted with CSR, Inc., to conduct this study, and CSR involved the American Bar Association. In the first comprehensive, quantitative study of this nature, differences in the quality of representation across three different types of guardian *ad litem* programs were examined. Data were collected in twenty-three counties selected to be representative of three guardian *ad litem* models and of geographic distribution between east and west. Within each county, guardians *ad litem* were randomly selected to present two cases, including one new case which had reached the dispositional or merits hearing, and one review case. This resulted in a data base of 259 guardians *ad litem* and 458 cases. Data collection took place in 1992 and 1993.

This study defined effectiveness in a procedural sense, or the extent to which guardians *ad litem* performed certain aspects of their role, rather than in terms of case outcomes. This decision was based on the belief that particular outcomes could not be assumed to reflect the child's best interests, since the best outcome may be different for each child. Data were analyzed in terms of the five dimensions of child advocacy which had been articulated by Duquette: (1) factfinder and investigator; (2) legal representation; (3) case monitor; (4) mediation and negotiations; and (5) resource broker. Information was collected through interviews with guardians *ad litem*, caseworkers, and judges, and through review of case records. Guardians *ad litem* were questioned about their specific activities on the identified cases and were also asked for self-ratings of effectiveness. This data was then compared to that obtained from caseworkers relative to the same identified cases, and from judges who rated effectiveness overall rather than in relationship to particular cases. Respondents were asked to assess the guardian's performance in specific role dimensions. Through this approach, information was obtained from a variety of perspectives.

The study yielded comparative data for three models. (1) The private attorney model involved the appointment of individual attorneys who were selected from a list and paid on an hourly rate. Guardian *ad litem* work represented a small portion of the attorney's overall workload. (2) In the staff attorney model, attorney specialists who represent children were salaried and typically county employees. They were often affiliated with a legal aid or public defender program. (3) Trained volunteers were used in the CASA model, which typically involved highly structured programs of training and support, although the organizational arrangements and funding sources were varied. Volunteer guardian *ad litem* programs in South Carolina reflect one sub-type of this last model.
In the investigative and fact-finding dimension, a surprising finding was that the guardian *ad litem* had no contact with the child in a large number of cases. Although the highest percentage was among private attorneys (30%), children were not seen in 8.9% of the CASA cases. Teenagers were most likely to be seen and young children least, reflecting a perception among some that infants and toddlers do not require a personal visit. Similarly, most attorneys did not make visits to either the child's current home or the parents' home while the majority of CASAs did. Most guardians *ad litem* had contact with the child's caseworker, although CASAs received the highest ratings, and most reviewed written sources of information. CASAs were rated much more highly on extensiveness of preparations and overall effectiveness in the investigative dimension.

In the legal representation dimension, staff attorneys ranked highest in activity. They were more likely to subpoena records, present evidence, and call witnesses. Both staff and private attorneys were more likely to attend hearings than CASAs, who attended only 53.4% of hearings in new cases and 60.3% of reviews. However, the study reported delays in appointment of CASAs in many cases. While CASAs were more likely to submit written recommendations and to offer a case plan, attorneys tended to present an oral report. Private attorneys were least likely to disagree with caseworkers. CASAs ranked lowest on forcefulness or assertiveness in advocacy. Both staff and private attorneys were more likely to have discussed placement options with the child. When the guardian *ad litem*'s reclf of the cases did the CASA present both views, and in the other cases only the guardian's view was presented. Attorneys were more likely to present both views. The study found that children appeared in court only infrequently, and were most likely to do so in the private attorney model. It is important to note that, in examining the legal representation dimension, the study design only considered the performance of the individual guardian *ad litem* rather than the complete range of child advocacy. If some of the gaps in legal representation were performed by an attorney who was partnered with a guardian *ad litem* (as in South Carolina's practice) this would not have been reflected in the findings.

Staff attorneys were most likely to initiate mediation or negotiations (84.5% of cases), and CASAs were the least (38.4% of cases). Agreements were reached in two-thirds of the cases in which negotiations were initiated, with no difference across models. Attorneys received higher ratings in mediation / negotiations.

CASAs were rated as very effective in monitoring in comparison to both attorney models. Only 5.5% of CASAs did not maintain contact with the child, compared to over half of the private attorneys and 40% of the staff attorneys. CASAs spent more hours per case overall, and a greater percentage of this time monitoring. However, when the guardian *ad litem* believed a change in the case plan was needed, staff attorneys were more likely than the CASAs to file a motion to seek a change.

In examining resource brokering activity, the findings revealed some ambiguity as to whether this should be a responsibility of the guardian *ad litem*. Defined as providing information on an available resource or assisting the child or family in obtaining a resource, a large percentage thought that this was not applicable to the role of the guardian *ad litem*. This ambiguity points to the need for clear role definition. CASAs received the highest ratings in this dimension.

The national study concluded that each of the three models of child advocacy had varying strengths and limitations across the functions. No one model was found to be universally superior. A strength of private attorneys was performance in the courtroom and in negotiations, but they performed few activities outside of the courtroom related to lack of time and resources. While staff attorneys were effective in legal representation and in negotiations, they did not tend to visit children in homes or monitor cases due to extremely high caseloads.

These findings suggest that a mixed model, using both attorneys and nonattorneys in each case, may be best. Among the recommendations of this study are the following: (1) Legal representation needs to be given more attention in CASA models. Volunteers should attend and be accompanied by an attorney in all legal proceedings. (2) CASA training should emphasize the need to present the child's view to the court in addition to the guardian *ad litem*'s view. (3) Guardian *ad litem* training should include mediation and negotiation activities. (4) Courts should implement formal terms of appointment that specify the expectations of the guardian *ad litem*.

Conclusion

The literature and research suggest several factors that may enhance the effectiveness of a volunteer program:

- Clear definition of the volunteer's role;
- Limiting the number of cases per volunteer to allow ample time for investigation;
- Independence and objectivity on the part of volunteers;
- Careful screening of volunteers;
- Comprehensive initial and ongoing training programs, including an emphasis on presenting the child's views, appearing in court, and negotiation skills;
- A broad range of volunteers within programs, and appreciation for cultural and ethnic diversity;
- Early appointment of guardians *ad litem* who continue until the child reaches permanency;
- Close supervision of volunteers by an effective program coordinator;
- A strong legal component tied to the volunteer programs.

While the actual effectiveness of a guardian *ad litem* program will vary from program to program, the research does indicate that volunteers can provide viable representation. Volunteers typically spend more time on investigative functions and in monitoring. When paired with an attorney, the guardian *ad litem* can focus on fact-finding and development of recommendations, allowing the attorney to perform legal functions.

Sources

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ommendation differed from the child's wishes, CASAs were least likely to present both views to the court. Only in one-ha