

# The Role of the Guardian ad Litem: A Look at Hennepin County Child Protection Cases

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## I. Executive summary

Interviews conducted with guardians *ad litem* (GALs) and juvenile justice judges in Hennepin County helped fulfill the one important goal of the WATCH CHIPS monitoring project begun in 2008 and as described in the primary report on this project, “Reasonable Efforts or Unrealistic Expectations: A Look at Hennepin County Child Protection Cases,” available at [www.watchmn.org](http://www.watchmn.org):

- examine the role of the guardian ad litem in CHIPS cases.

Moreover, the GAL Program in Hennepin County was eager to get feedback on how well their GALs were representing the best interests of children in CHIPS cases and wanted to capture the GALs’ reflections on the juvenile justice system as a whole. Juvenile court judges also wanted to offer recommendations on how the GAL Program might improve the approach, training, and structure of their program, and on how the juvenile courts might be as friendly and open to children and their families as possible.

This companion report represents those effects.

Mary Lay Schuster, University of Minnesota professor and WATCH volunteer, and Amy D. Proppen, PhD graduate from University of Minnesota and assistant professor at York College in Pennsylvania, conducted, transcribed, and coded the interviews for this report and compiled the recommendations made by the interviewees.

*Recommendations on how to improve the GAL Program and its interactions with the juvenile courts in Hennepin County:*

- *Emphasize, in GAL training, how GALs can maintain a distinct, neutral, and independent voice and still participate as team members in CHIPS cases.*
- *Continue to train GALs on techniques to build relationships with children and their families and to recognize that their observations serve as important evidence in CHIPS cases.*
- *Initiate dialogue between judges and the GAL Program to determine how GALs can better meet the needs of the judges in terms of written reports and whether this improvement can be met best by changes in GAL training or by changes in rules and requirements.*
- *Work with the attorneys who represent GALs to ensure that they are sensitive not only to speaking for GALs but also to helping GALs have a voice during trials.*
- *Try to make services for victims of domestic violence available after CHIPS cases are closed—or emphasize that they are still available.*
- *Identify and recommend specific services for children who witness domestic abuse, including programs and individual therapy.*

- *Provide GALs, through training, with a greater understanding that domestic violence is a societal problem rather than a problem within individual families.*
- *Continue to recruit GALs who represent a variety of ethnic and socioeconomic backgrounds and to train GALs how to respect and engage children and parents from those various backgrounds.*
- *Make the roles of GALs and tribal representatives in IWCA cases distinct and engage the tribe early in order to ensure that a representative attends the CHIPS hearing.*
- *Address such problems as racism, intergenerational poverty and drug abuse, and dangerous and hostile environments as systemic problems.*
- *Recognize that GALs still struggle with whether to transport children or not. In some cases, they might be the only person available to do so and might even be encouraged by social workers or the judge to transport a child.*
- *Continue to encourage mentoring and support groups to address secondary trauma among GALs.*

## **II. Project description and methodology**

The Guardian *ad litem* Program in the Fourth Judicial District Juvenile Division provided WATCH with 46 randomly selected names and contact information from their over 250 GALs. Of the 46 GALs contacted, 28 agreed to a 45-minute face-to-face interview. In addition, 8 judges serving or having recently served in the Fourth Judicial District Juvenile Court agreed to similar interviews.

The interviews were transcribed and then coded by the researchers. Although interview questions could have been used as starter codes, open coding on the transcriptions was performed with unrestricted topics emerging. (See the appendices in the primary report for all interview questions.) The researchers then developed a merged list of topics and then recoded across the entire data set. Finally, they carried into the rubric of domains and subcategories a number of interview quotes to serve as examples.<sup>1</sup> This report offers a great many of those quotes to capture accurately and thoroughly the voices of the GALs and the judges interviewed.

To maintain confidentiality, the Juvenile Justice Judges are identified by JJJ and a random number, and the GALs are identified GAL, either V for volunteer, C for contractor, or E for employee, and a random number.

## **III. The originals and role of the Guardian *ad litem***

GALs represent the best interests of the neglected or abused child in CHIPS cases and maintain an independent or neutral voice in the courtroom, as described in the primary report on this project. The idea for the use of Court Appointed Special Advocates (CASA) or GALs in child protection hearings began in the 1970s when a Seattle Superior Court Judge, David Soukup, expressed concern about making decisions about the placement or welfare of abused and neglected children without having enough

information. His solution was to appoint community volunteers to speak up for the best interests of children as their cases went through the juvenile justice system. Now the Federal Child Abuse Prevention and Treatment Act (CAPTA) (or Public Law 93-247) requires each state to appoint a GAL for every child in every case involving abuse or neglect that results in a judicial proceeding, and the 1988 reenactment of CAPTA (or Public Law 100-294) requires states to evaluate the effectiveness of their child advocacy efforts.<sup>ii</sup> The National CASA Association itself formed in 1982, and as of 2006 more than 68,000 GALs were serving in 1018 state and local program offices nationwide and helping more than 240,000 abused and neglected children.<sup>iii</sup> Although the term guardian *ad litem* means “guardian for the proceeding,” or “for the case,” for many neglected or abused children, the GAL may be the one constant adult presence in their lives.

GALs’ ability to employ various methods of data collection and work across contexts is often informed by the variety of background experiences they bring to their work. As one GAL described, “I had long, long ago worked with kids at camps, who came from similar situations to these kids, you know. And some of them, we used to be unsure when they went back home whether someone was going to come meet them and that kind of thing” (GAL4V). Some GALs then are drawn to their work because of their own personal backgrounds or experiences, while others have had more explicit training in a related professional field or through other volunteer work. One GAL, for example, described having “worked in the schools . . . I would see a kid in trouble, it was just something . . . I wanted to do” (GAL7V). All GALs seem drawn to the work out of a sense that all children should feel safe and have advocacy: “For me, a really driving piece for me is that, you know, every child deserves to feel safe and have a safe nurturing environment” (GAL18V).

The GAL is appointed by the court to carry out a specific legislated duty but also helps put a “human face” on the whole process. As one GAL described this second goal: “I think that all judges want to remember that this is a humanistic thing, and that this is a hard process . . . we are dealing with people’s lives here. The thing about a guardian *ad litem* is that we remind the counselors that this is a person’s life . . . and this child is depending on this court of law to make this decision about what’s going to happen to them” (GAL16V). Judges then rely on GALs to provide nuanced details about the child’s life, such as how they are progressing in school and how they are getting along in foster care. And so, one GAL who mentors new GALs always tells them to remember as they prepare their final written report to the court, ““The reports that they are getting from the County and from service providers are very factual, so what you want to do is kind of fill in the lines”” (GAL25C).

GALs then will often want to meet with the child very early on in the investigation; for example, as this GAL described: “[F]irst I want to try to meet the child because . . . you don’t want to be doing it as an abstract kind of thing . . . So I will call the social worker to find out where the child is and call that foster home and talk to the foster parents and make an appointment to go out there and get as much as I can from the social worker and the child worker” (GAL4V). Many GALs feel that it helps to build a trust relationship if the child clearly understands that the GAL is on their side. One GAL, for instance,

described how she wants the child to know “that I am someone that . . . wants to get to know them, that has been assigned to their case and, whether they like it or not. I know that I am a total stranger, but ‘I am somebody that is going to look out especially for you while you go through all this, and I hope that you will let me get to know you more’” (GAL28V).

While GALs are indeed neutral parties who work to gather and convey information about the case, and while children and families often appreciate their impartial position, GALs’ recommendations to the court are informed by their interviews with parties or individuals who have developed clear perceptions about the child, such as teachers, parents, foster parents, doctors, and social workers. As one GAL said, “You have to talk to medical professionals, you have to talk to counselors, you have to talk to the family, you have to talk to the children if they are of talking age, and some don’t want to talk to you even if they are teenagers. So you have to just make sure that you get as much information as you can from everybody involved” (GAL17V).

For example, many GALs consult with the child’s doctor or read medical records to gain information about a case. As one GAL said: “I like to get as many records as possible, as soon as possible . . . I do look at medical records, I think more often than other guardians do because it sort of doesn’t scare me, all the language, and I find even a lot by the medical history of the families” (GAL26V). This GAL went on to describe how the medical records in one case reflected a history of neglect that eventually led to a young boy’s partial blindness: “One boy had an eye infection due to a puppy I think or some animal when he was little, and he hadn’t gone back in for treatment and so he was partially blind. He was 10 or 11 at this time, partially blind, and the hospital . . . had records of all the phone calls and letters that they had sent to the mother” (GAL26V).

GALs interact with parents and foster parents to gain information about the child’s situation. Foster parents are often viewed as a “wonderful source of information,” because GALs are able to observe the child in the foster setting (GAL21V). GALs’ relationships with parents can be more challenging, however. On the one hand, it is the goal of the court to reunify the family whenever possible; on the other hand, reunification of the family is not always in the child’s best interests, and it is part of the GAL’s job to gather enough information to be able to make recommendations in this regard. To this end, GALs often have to explain to parents that to act in the child’s best interest does not always mean advocating for the child to remain with the parents. When a parent learns that the GAL’s job is to represent the best interests of the child, for example, “Parents think, ‘Oh, good, of course she wants me to have the kids.’ . . . So sometimes towards the end parents don’t like me” (GAL26V).

As one judge described, GALs’ work with parents often puts them in a precarious and sometimes even dangerous position, and GALs must be prepared to work through the challenges of this aspect of their investigative work: “Their job is to meet with the parents, do interviews with everybody, talk to the children, talk to the relatives, where they may be placed. That’s as difficult as any job around here because they are walking into an environment they may be unfamiliar with; it may put themselves in physical

danger. There are angry parents who are angry with everybody” (JJJ5). Through their interactions with teachers, doctors, and families then, it becomes possible for the GAL to gather detailed knowledge of a child’s social interactions, behavior, and familial history. Again, this sort of special knowledge is collected with the best interests of the child in mind.

#### **IV. Interview themes and recommendations**

A number of themes and recommendations emerged from the interviews with GALs and judges. Some of these themes and recommendations address issues raised in the primary report and are addressed again here; others describe unique problems and suggested improvements in the GAL Program approach, training, and structure.

##### Establishing relationships with children and parents

The work of the GAL begins when the GAL Program staff receives a copy of the CHIPS petition, which explains the circumstances that brought the family to the attention of child protection, and a staff member attends the Emergency Protective Care (EPC) or “hold” hearing. The EPC hearing is held within 72 hours of the child’s removal from the home, and the GAL Program assigns a specific GAL to work on the case from that point on. GALs note that one of the first things they do is call the field worker and the child services worker assigned to the case, and from that point on, as one GAL said, “If it’s at all humanly possible, I do everything that I can to work as a team” (GAL11V). GALs also note that they are dependent on this initial contact with the social worker, an essential starting point in understanding the case and beginning the “digging and digging and pestering people until you get the information you need” (GAL19C). So building productive relationships with the social workers assigned to a case is essential to the GAL’s success in representing the best interests of the child.

Equally important are the relationships that GALs develop with children. The GALs interviewed described the strategies they used to show children that they can trust and confide in the GALs who come to visit them. In defining their roles to children, for example, GALs stress their appointment by the court and carefully distinguish their role from that of the social workers and attorneys. As one GAL describes his job to children: “I am independent. I actually work for the State, and my job is working for the judge. I am an officer of the court, and what I do, I want to make sure that the judge has all the information that they are going to need to make an intelligent decision . . . if there is anything that you want the judge to know, you tell me. If you are having any problems, you tell me” (GAL10C). GALs then try to explain to children that they will represent their best interests, but they are not like the children’s attorneys who must advocate for what the children want. Examples work best in making this distinction for children, said one GAL: “Like, ‘You might tell me that you want ice cream for breakfast every single day . . . and I could tell the court that that’s what you want, but that wouldn’t be my recommendation. I do what I think is best for you versus what you want. But I certainly want to hear input into it’” (GAL15C).

To get that input, GALs have learned in training and developed through experience their own strategies for getting children to trust them. Many GALs bring games, magazines, puzzles, books, coloring books, and such to their meetings with the children. “I have a big assortment of games,” said one GAL. “Believe it or not, Old Maid is a favorite one. I say, ‘Let’s just get silly and play Old Maid’” (GAL28V). GALs, however, refrain from asking too many direct questions, such as “‘Where you want to be? Who do you want as your parent?’” (GAL8V). They avoid making too many promises about outcome, but they do reassure the children that the situation in their homes “is not their fault. And it’s not their job to fix it” (GAL22V).

The one promise that many GALs will make is that they will come back to see the child. As one GAL described her approach: “I say, ‘Yeah, I am going to be coming back a lot. I am going to go to your school and the doctor you saw the other day. I am going to go talk to that doctor, so I will know all about you’” (GAL27V). Along with making these promises, GALs try to validate the children’s feeling: “‘I understand why you would want to go back to your mother,’” said one GAL as she described a statement she might make. “‘Who wouldn’t want to be with their mother, you know. But your mother has been using crack daily for the last three years,’ . . . just something to validate their feelings on how they would want to be back in their situation” (GAL16V). And, so GALs must encourage children to trust them but still maintain careful boundaries. “I don’t try to be their best friend,” said one GAL. “Once in a while, I take someone out to lunch because I want information. Other times I will take them . . . for a little walk and start talking. I don’t see my role as a social worker or a lawyer. And I see myself as a fact finder in order to make recommendations to the court” (GAL13V). It was clear in the interviews, however, that for some GALs maintaining those boundaries was a challenge as they became fond of the children they met and became “more deeply involved” as they tried to “fill those voids” they saw in the children’s lives (GAL14C). These GALs described making themselves available for late-night phone calls, taking children to concerts and upscale restaurants, helping them obtain bicycles, and such.

When meeting the children’s parents, GALs again stressed their distinction from the county social workers and from the parents’ attorneys: “My job is to have as much information as possible so I can make an objective opinion,” one GAL tells parents (GAL23E). But, in working with parents, some GALs find it important to stress the “amount of power” they have to “talk to everyone” before making their recommendations; “I do try to make it clear to them that they can’t really hide from me; I am going to be everywhere” (GAL7V). To build cooperation and to counterbalance the possible hostility that GALs might encounter from parents, GALs emphasize the common goal of looking out for the best interests of the children. “‘You love your kids, I know you do,’” one GAL tells parents, “‘And I am here to help them and to help you. We are not here to take your kids away from you, but I will guarantee if they are not being taken care of, we will’” (GAL10C). Another GAL described a similar statement she makes: “‘This is an awful place to be. I understand that you are upset, but we have got to think about the kids’” (GAL23E). And GALs try to be respectful of the parents, particularly in their own environment. One GAL, for example, described her approach as simple as: “If there is a pile of shoes by the door in the winter, I take off my shoes” (GAL19C).

In their relationships with the children, however, some GALs acknowledge how difficult it is to set boundaries. “I don’t want to come across as an authoritative figure, and yet I don’t want to be their friend,” said one GAL. “But I have offered to drive parents to visit [the children] or put them in a situation where maybe they are a little bit more comfortable” (GAL8V). And so, some get more involved in making sure that the parents fulfill the details of a case plan. One GAL, for example, described making sure that a new school got the children’s records. When the mother had not yet taken care of this task, the GAL told her, “There is one piece you didn’t finish; it’s very important for that other school to have the information . . . They can’t help your child the best they can if they don’t have that” (GAL18V). The GAL then continued to check with the new school to make sure the records were transferred.

The judges interviewed endorsed the GALs’ need to maintain independent and neutral voices in CHIPS cases and subsequent recommendations, and these judges certainly understood the necessity of GALs establishing contact and, to some extent, a relationship with children and parents. As one judge said of the GALs, “They are not advocating . . . they are not pushing any agenda,” and the GALs rely on the “whole wealth of skill and knowledge of things” to tell the court, “You know, something is just not right. Something is really bothering me, and I don’t exactly know what it is. I am trying to figure that out” (JJJ7). Another judge confirmed the need to have this independent voice in CHIPS cases: “And the department child services workers are great, but the department speaks with one voice. And it’s not always what the child service workers’ first choice would have been. And the guardians can really get in that more independent voice, so I just really appreciate having them on every single case” (JJJ1). By maintaining that independent voice then, GALs can bring to the court’s attention very specific problems and needs that emerge in the case.

The judges also agree that the fundamental step in the GALs’ voicing their independent opinions and providing the court with information about the best interests of children comes when GALs establish relationships with those children, and if possible, with other family members. One judge, for example, summed up this step simply as developing “a relationship with the kids so that ultimately I get a better idea of what the kids need and want as well as what is best for them” (JJJ1). This same judge as well as many others offered concrete examples of what recommendations they wanted that relationship to yield: “A membership to the YMCA. A kid who is really upset about being overweight and is getting teased about it. We can do something about that” (JJJ1). One GAL, for example, cautioned the judge that unless a teenage boy was able to see his brother who just got out of prison, the boy was “going to run and do it [visit his brother] anyway, so we might as well try to monitor it” (JJJ2). In an ICWA case, another GAL knew “all the cultural places where they [Native American children] can have some fun, organized, clean fun, you know, where they are going to be safe” and so the GAL could recommend a summer camp for the child (JJJ5). Judges recognize also that GALs’ relationships with parents can be productive in determining the best interests of the child. GALs “don’t take sides; they don’t get involved in blaming the parents, which is easy to do . . . that’s a hard line to walk, and I see some people do such a good job at it, and I don’t know [if] at some

point you can train people to do that or not, but I am really amazed by it” noted one judge (JJJ3). The neutrality of GALs then can result in information essential to judges’ final decisions.

In fact, judges may rely on a GAL’s relationship with the child to send a special message to that child. One judge offered a hypothetical example of how she might send such a message to the child: “I know that Susie is probably not that excited to go to therapy, but here’s why I am doing it, and here’s what I hope she gets out of it, and if she wants to come to the next court appearance, we can talk about it, but I want the appointment set up before we come back” (JJJ1). GALs who have been with a child for a long period have, at times, the ultimate authority in a judge’s mind, where the GALs “have longevity and really know the child and can demonstrate that” as in the example of a child in a foster home where the foster parent had not completed the requisite number of hours of training. “Please don’t disrupt this placement,” requested the GAL who had been with a child for many years: “This is how this child was before, and this is how good they are now in this placement, and this is stable and this is good” (JJJ8).

GALs then are expected to maintain an independent and neutral voice to represent the best interest of the child and to gather information about that child and their parents and family members by establishing, if at all possible, a relationship of trust. Although GALs know that certain boundaries should not be crossed into friendship and emotional involvement, these boundaries may be hard to maintain. But the results of those relationships, the information gathered and observations made by GALs, provide a way to represent the best interests of the child.

WATCH recommendation for the GAL Program:

- *Emphasize, in GAL training, how GALs can maintain a distinct, neutral, and independent voice and still participate as team members in CHIPS cases.*

### Convincing the court

When asked about persuasive strategies used to present their recommendations to the court, GALs note again that they bring the “human face” of the child into the courtroom. They might say, “Sally is ten years old, and she is in the fourth grade. She really likes school; she is attending it; she is good at math.’ Just something like that to personalize it a little bit” (GAL15C). In fact, as one GAL said, “Sometimes I am the only one who has ever laid eyes on the child” (GAL4V). Those direct observations serve as the evidence or proof to support GALs’ conclusions and recommendations as the case progresses and as the court makes its decision about final placement for the child.

GALs do not remain silent until time for a formal recommendation. Often they intervene for the child while a review is still ongoing. In one case, for example, a child was going to be suspended from school unless he had a personal care attendant sit with him in class. The GAL notified the judge of the dilemma and that a volunteer was available to sit with the child. “So he still is at school,” she noted, “and he is doing really well, and I think that made a big difference for him” (GAL5V). Another GAL called the social worker

assigned to a case where two children had been placed in foster care to alert her that the foster mother had other people living in her house, and the two children were sleeping on the floor. The GAL discovered this problem was during an unannounced visit: “I knock on the door and say, ‘Gee, I was just up the street, and I thought that I would pop in and say hello. Oh, my, what’s that all over the floor [the children’s bedding]” (GAL10C).

GALs’ specific observations can also serve as evidence as to whether a parent is fulfilling the requirements of a case plan or whether a foster parent is meeting the child’s needs. As one GAL explained, the public defender might say, “‘The mother did all these things [for example, attending parenting classes],’ and I will say, ‘Yeah, but she hasn’t embraced it because I was at a visit, and this is what she said to the child. And this is how she behaves around the child’” (GAL23E). Or GALs can present these observations to attest to whether foster parents are attending properly to the child. “Tell them what you [the GAL] saw in the home,” said one GAL in describing her reports to the court: “You know, ‘I saw a very fragile baby hooked up to an oxygen machine and fed by a tube, and having, you know, the foster parents sleep right next to them’” as opposed to saying, “‘A very critically ill baby that has to be watched 24/7’” (GAL24C).

Judges expect these kinds of detailed observations from GALs and therefore, in their interviews, used similar examples. “Well, the details are the biggest things,” said one judge. Where a social worker’s report might say, “‘The child is suffering from anxiety,’” the GAL’s report might relate, “‘She is biting her fingernails down to the quick [and] smearing feces on the wall’” (JJJ4). In speculating that a foster mother had become depressed, one GAL told the judge that “‘the home seems really dark’” and all the children “‘do is watch TV’” (JJJ8). Another GAL helped this same judge “visualize” the ways that a mother was preventing another occurrence of sexual abuse of one child by another child by helping the judge see “the layout of the house”: the GAL told the judge, “‘Well, the mom sleeps on the living room sofa, and now the kids are in separate bedrooms,’” and the mother “‘sleeps in between to make sure that there is no interaction between the kids’” (JJJ8). Those detailed observations along with information from written reports and conversations with therapists, doctors, teachers, and others become the support for GALs’ recommendations about how to meet the best interests of the child.

Thus, the most important task for GALs is creating the “big” or “whole” picture of the child’s situation and needs. As one GAL put it, “The County Attorney and the public defenders for the parents have very narrow roles, and that is just to advocate for their clients, and so they do tend, I think, to take extreme positions, and in some cases they are adversarial so I think that it’s my role to look at the big picture and say, ‘Well, you know, . . . it’s not quite as black and white as this’” (GAL2V). And, judges agree with this task: “I think I count on the guardian’s evaluation of the living situations; it doesn’t mean that nobody else has access to it, but other people don’t pay as close attention to it” (JJJ3). One judge offered an example of how she was focused on her own “power struggle” with a mother in an educational neglect case. It was the GAL’s descriptions of how wonderful the child was that encouraged this judge to say, “‘Maybe I need to see this kid.’” When the child appeared in court, the judge, who up to that time had seen only problematic academic records, saw the girl that the GAL had tried to describe: “And low and behold

this girl comes in; she looks fabulous; she is healthy; she is beautifully kept; her skin looks great; she behaves . . . it changed my vibe about this case. And as a result, we are close to closing the case” (JJJ3). Even though GALs are granted some voice and authority by statute, it is their “expertise,” established by their observations in creating the “big” picture for judges, that makes them persuasive in court (JJJ2). The GALs are a “fact witness” and also see “the child in context,” something that the GALs are “pretty good about” (JJJ5). GALs then are generally granted a voice within a CHIPS case because of their detailed and independent observations and recommendations.

WATCH recommendation for the GAL Program:

- *Continue to train GALs on techniques to build relationships with children and their families and to recognize that their observations serve as important evidence in CHIPS cases.*

### Submitting written reports

The Rules of Court in Minnesota require that the GAL in a CHIPS case submit periodic certified written reports to the court no later than five business days before each review hearing.<sup>iv</sup> Even though the judges recognize that things might change in between the time they get a written report and a hearing, judges find written reports extremely useful, for the following reasons:

Written reports allow GALs to say something negative without having to say it in front of the family: “ Sometimes it’s a style difference, and it’s really important . . . if you are going to say something real negative, try to put it in writing, rather than say it in front of the parents” (JJJ8).

Written reports ensure that GALs who are represented by an attorney can still have a voice in the proceedings: “A lot of times the more experienced guardians will send me a report when they have an attorney because they know that the attorney is going to be the one who wants to speak in court. And so I get more details that way . . . I try not to come into chambers too much but sometimes we do. And I will say that that attorneys are more assertive back here than the guardians are”(JJJ1).

Written reports are useful for judges who want to read everything about the case in advance of the hearings or trials: “I am someone that reads everything that I get before, and so that helps me very much to have a written report, but if the guardian is good enough and can give the oral one, I am fine with that too. It’s an area that people find lacking in the guardians’ office” (JJJ4).

Written reports can be supplemented by oral reports in the courtroom: “So we prefer to have the report and have read the report, but sometimes, you know, the night before somebody got homeless or there was a fire or just some emergency happened in between so even if I get a written report, I ask for an oral report” (JJJ8).

Written reports from GALs should be available for the judge at the same time that reports from other service workers or care providers are made available: “Yes, a written report in advance is always helpful. In every case . . . there is usually 20 or 30 pages on something that I have got to read, PHRs [prehearing report], psychiatric, psychologicals, IEPs of the children, things like that that I have got to get through, and it’s helpful if I have an idea in advance what the guardian will probably say at the hearing that . . . means that I don’t get surprised” (JJJ5).

Written reports help judges prepare for the difficult issues that might emerge in a CHIPS case: “I have got an 8:45 sentencing hearing on a horrendous case, and I have been struggling with this thing and reading it over and over and over, and so the more I get in advance of actually going on the bench, the more I know about what somebody is going to tell me when I get in the courtroom. I feel better prepared to deal with it” (JJJ6).

Written reports strengthen the GAL’s voice in a case: “When I am reading the other reports I have that input right there, as opposed to reading the other reports ahead of time and not knowing what the guardian is going to tell me. Plus I think that some guardians will not add anything if it’s in court; they will just say ‘I agree with what has been said,’ or something. Whereas if they have to write their own [report] independently, it gives me more” (JJJ3).

Written reports from GALs contain recommendations that are unique to the case: “Oh, I think it’s helpful because . . . there are some guardians that are strong advocates . . . for the children or families, and so they might point out things that the social workers won’t, and always they point out stuff that the social workers would really like to request but can’t because of Department policies or because of budget cuts” (JJJ8).

Written reports avoid escalating emotions in the courtroom: “A lot of times when they need to do a report, it’s because something is going bad with mom, and that’s hard to say in front of mom a lot of times, especially when you are trying to get some trust with her too. So it’s just a lot easier to lay it out in writing, instead in that emotional moment in the court” (JJJ1).

Written reports help ensure that a GAL will not be intimidated in the courtroom: “To some degree, I think that if there are some difficult issues, sometimes it’s easier to put those in writing than it is to get up and talk about it in front of everyone, and especially to the degree that you have got guardians who are not . . . lawyers; they are volunteers” (JJJ2).

In these remarks, it is not clear whether GALs are not submitting their written reports according to the rules or whether judges prefer to receive written reports more frequently.

WATCH recommendation for the Juvenile Justice System:

- *Initiate dialogue between judges and the GAL Program to determine how GALs can better meet the needs of the judges in terms of written reports and whether this*

*improvement can be met best by changes in GAL training or by changes in rules and requirements.*

### Being represented by an attorney

At a trial in a CHIPS case, the GAL may be called to the witness stand and questioned by the County Attorney and by the attorneys for the child and the parents. At this point, GALs themselves are represented by attorneys.

Many GALs see several advantages to having a legal expert in such cases. “There is too much legal protocol and stuff going on that it just kind of goes over my head, even though I have done this for several years,” described one GAL (GAL19C). Moreover, the attorneys representing GALs may be “very eloquent speakers,” which makes the voice of the GAL “more relevant” (GAL3V). Finally, the whole trial process can be “very intimidating,” said one GAL because a “lot of people are really fearful of the whole court process” (GAL5V).

Judges agree with these benefits. A “volunteer guardian who is not used to the system” may indeed be a “little intimidated by the process” (JJJ6). “Obviously you want a legal expert,” added another judge, “to put the guardian’s position within a legal framework before the court” and to separate the role of the fact witness from that of the advocate. These lawyers “reinforce the tough decisions that the guardians have to make,” particularly those GALs who have become fond of a parent but know it is not in the best interests of the child to “let them parent” (JJJ5). Having a lawyer represent and speak for GALs then allows GALs to distance themselves from emotional decisions but also to reinforce their recommendations.

On the other hand, GALs’ voices might be lost and GALs kept at too great a distance when attorneys speak for them, some GALs and judges speculate. The judges recognize this possibility: “I think that the guardians have a hard time once an attorney steps in for them because they are so used to arguing their own position” (JJJ4). The GALs articulate even more this difficulty. Sometimes attorneys “take over the case,” and particularly the “inexperienced GAL’s opinion could be totally left out” (GAL16V). Other GALs find that they spend so much time telling their attorneys what to say, “I am not sure why I can’t just say it myself” (GAL13V). And, particularly during her court proceedings, one GAL described how “I am furiously writing to say, ‘This is what you now have to say.’ . . . It drives me crazy for the most part” (GAL7V). Thus, many GALs and judges recognize that the inexperienced or intimidated GAL might benefit from the legal expertise of an attorney but be, in essence, silenced by that very advocate.

WATCH recommendation for the GAL Program:

- *Work with the attorneys who represent GALs to ensure that they are sensitive not only to speaking for GALs but also to helping GALs have a voice during trials.*

### Confronting domestic violence

Because their main concern is the best interests of the child, GALs focus primarily on resources to help children who live in homes where domestic violence is an issue. Many GALs feel that “there is nothing really great out there for children of domestic violence” (GAL15C). Children can benefit from individual therapy or family therapy, but the GALs interviewed were at a loss to highlight any organization that “specifically deals with kids of domestic violence” (GAL15C). And, judges seem to agree: “I think that there are very limited resources that I am aware of, especially for children who have been witnesses to domestic violence” (JJJ8). And even when children who undergo therapy for this issue, this same judge pointed out, “I don’t think that we have a really good way to evaluating the quality of their therapy” (JJJ8).

The judges and GALs interviewed seemed particularly attuned to the results of children observing abuse and sometimes even intervening in the abuse: “I think that it’s obviously very, very damaging for kids to grow up in that environment” (JJJ2); “It has such a huge impact on them to see their mom having no self-respect and being treated like she shouldn’t” (JJJ1). In describing one case in which the abusive husband turned from his wife to his two-month-old baby and broke the child’s ribs, damaged his spleen, and fractured his skull, one GAL concluded, “But these women, they just can’t keep these guys out of their lives” (GAL10C). Moreover, the message conveyed to children whose mothers stay with their abusers is particularly damaging to their own self-esteem: “Sometimes I don’t think that the advocacy community recognizes the impact that it must have on these kids when they see their mom choosing this guy over them. And, not only is she choosing this guy, she is choosing this mean guy” (JJJ3). But conveyed along with this worry is the underlying assumption of choice—that a mother is choosing to remain with her abuser and that she is choosing that abuser over her children.

Regardless of that assumption, most judges and GALs do articulate an understanding of the features of domestic violence, particularly financial and emotional dependency and the cycle of domestic violence. As one GAL said, “Because most of the time, these women are alone, and they have got a guy finally in their life who is going to take care of them. He is going to beat them up occasionally, but that’s ok because they are being taken care of” (GAL10C). And, a judge offered a similar summary of a public defender’s and a social worker’s conclusions in one such case, who told the judge: “‘You have got to understand that given this women’s history, this is the best man she has ever been with.’ He may be abusive but . . . [the public defender] sort of listed all the things that this man does for her and these kids” (JJJ2). But GALs who must evaluate the family to represent the best interests of the child express frustration with the domestic violence victim’s propensity to deny the abuse, perhaps because of that financial and emotional dependency. “The mothers almost always deny it, even though there is ample proof of hospital visits,” said one GAL (GAL12V). “I am always wondering if it goes underground,” speculated another (GAL22V). Therefore, along with their understanding of how women may be caught in the cycle of domestic abuse, judges and GALs also may express impatience with what they label as the woman’s “choice” in remaining with her abuser and denying that abuse, propensities that undermine efforts to remedy the abuse.

Of the two most common strategies to address domestic violence, therefore, both GALs and judges are skeptical. First, as one GAL said, “No-contact orders are a beautiful thing when they are enforced,” but too often even the children are recruited in hiding the fact that their abusive fathers are having contact with the family: “Even the kids give you hints that they are around, ‘Well, I saw Dad. Oh, [that was] about three months ago’ . . . Mom had told them, ‘Don’t tell them he was here. He will get in trouble’” (GAL25C). No-contact orders work only if the victim is willing and able to separate from her abuser.

Second, both judges and GALs have doubts about the effectiveness of the domestic abuse programs that parents are required to complete. These programs might not be effective, as one judge put it, “Not because they are not good resources, but because their recipients are not willing” (JJJ6). “What do you do,” asked a GAL, “if someone completes their plan, but you are uncomfortable that they really have just gone through the motions” (GAL22V). Parents might overtly resist the programs; they “can never make any of them [domestic abuse classes], they always conflict with work . . . so it’s like they are not really engaging in it,” described one judge (JJJ8). But even those who attend all the sessions don’t “gain any insight into how this is hurting their child” (GAL19C) or “they don’t see their children as the victims” (GAL 21V).

And, so judges may even ask GALs to cross the boundaries of their responsibilities to help the family affected by domestic violence. As one judge described, “I have asked the guardian to help the mom on a safety plan for children, and I don’t know if that’s going outside the boundaries of what the department’s goals are with the mom” (JJJ4). Or, the judges and GAL recognize that requirements of a case plan just cannot “fix” the effects of domestic violence and stop altogether domestic violence within a family. Mothers are “scared to tell the guardian” that an abuser is back in the family “because they might be afraid their kids are going to get taken away again” (JJJ4). Domestic abuse, as learned behavior, is cross-generational, and “it usually goes hand and hand with other things, like mental health treatment, medication, becoming sober” (JJJ5). The primary problem is that the family remains in the legal system for only a prescribed amount of time.

But despite this admission that the requirement of a case plan might not effectively change or even address domestic violence issues, to fulfill their fiduciary duties GALs must evaluate families to represent children’s best interests. Even though one judge admitted, for example, the impossibility of “fixing families,” she still did rely on the GALs’ observations of those families: “And sometimes it’s the guardian that will say, ‘You know, I was there, and the parents really aren’t doing that well.’ Or they will say, ‘Wow, these parents really have made tremendous strides, you know. They have learned that the way to address a problem isn’t by hitting the child or your partner’” (JJJ7). Even though most GALs and judges express confidence in their understanding of the complications of domestic violence, they do not express confidence that case plan requirements, such as domestic abuse programs, or legal actions in criminal court, such as no-contact orders, or in family court, such as orders for protection, are effective in the long run for families that come under the scrutiny of the juvenile court.

WATCH recommendation for the Juvenile Justice System:

- *Try to make services for victims of domestic violence available after CHIPS cases are closed—or emphasize that they are still available.*
- *Identify and recommend specific services for children who witness domestic abuse, including programs and individual therapy.*

WATCH recommendation for the GAL Program:

- *Provide GALs, through training, with a greater understanding that domestic violence is a societal problem rather than a problem within individual families.*

### Confronting cultural and ethnic differences

Initially language barriers and the shortage of translators can complicate a case. One GAL, for example, asked, “I often hear of guardians who just use the children to translate, and I think ‘How appropriate is that?’” (GAL1V). In some cases, even when a translator is present or when a parent asserts that she can understand the other parties in the case, the judge and the GAL cannot be sure that they are really communicating with that parent. One judge described such a case: “There was a question of HIV and . . . the child not getting their appropriate medicine . . . and so it was very difficult for me to make sure that Mom was understanding everything that was going on because she would say, ‘Well, I will let you know if I don’t understand.’ Well, if she doesn’t understand, how does she [let me know]” (JJJ6).

But even more challenging than language barriers are different cultural norms. As one GAL said, “I had a family from India, and . . . they just shared with me a lot, ‘This is how we do it [discipline a child] in India,’ and so I was like, “Ok, but you can’t do that here, and this is why”” (GAL15C). Other GALs describe the different standards within a variety of cultures, such as “extreme loudness” and “chaos” and “kids being allowed to do all manner of things that I was never allowed to do as a child” (GAL20V). Among Somali and Hmong communities in particular, to be successful in working with families, GALs note that they must be aware of how elders or different clans function. One judge recalled a case, for example, in which the mother would not talk with the GAL because, the judge speculated, the mother “is supposed to go to an elder and have approval of doing that first” (JJJ4).

Another GAL, who specialized in ICWA cases, described how in the Native American culture, “You have a lot of aunties and uncles that come in all the time, and that’s part of the Native American way” to have “seven or eight people in this household” (GAL24E). In these cases, only cultural differences but also ICWA regulations may challenge GALs. Another GAL, however, expressed frustration in “having to wait an extended time for the tribal representative to get involved in the case” (GAL20V), while a judge who handled a great number of ICWA cases noted that at times the distinction is “blurred as to best interests” because she has to ask of the Native American GAL, “‘Now, is she here for the tribe or is she here for the children?’” (JJJ4). Finally, family members might become hostile just because of the dominant white image of the court and the parties involved in case. As one judge said, “I often think it’s very unfortunate when we have an African American family, and everybody around that family, the social worker, the judge, the

guardian, the attorneys, everybody is white and predominantly female. And some of the men in these cases just get beside themselves, and I can't blame them because they feel this conspiracy of these white ladies trying to tell them what to do" (JJJ3).

Although many GALs and judges detail the challenges of such cultural and ethnic differences, they also sense that such differences mask a gap between families and the GALs caused by socioeconomic differences. As one GAL concluded, "I understand that their homes are not going to look exactly like [mine] . . . it really doesn't have to do so much with ethnicity, as it has more to do with poverty" (GAL4V). During the recent bus strike in Minneapolis, for example, another GAL noted, "We had people who were living out in the suburbs [who] had to have three UAs [urinalysis tests for drugs or alcohol in the system] a week, had to get downtown, no buses, no cars" (GAL4V). And so, speculated one judge, there are "some guardians that still look at the families through their eyes, and those families will never be college-educated, upper middle class families, so your expectations that every child is going to get their own bedroom with their own full-sized bed and their own TV and DVD [player], I mean that's just not going to happen" (JJJ8).

The challenge for the GAL Program and for the juvenile court is how to bridge these cultural and socioeconomic differences. New GALs go through sensitivity training for cultural differences, and the GAL Program attempts to recruit GALs who represent a variety of ethnic identities and economic backgrounds. But because the majority of GALs come from ethnic and socioeconomic backgrounds that differ from those of families involved in CHIPS cases, the GALs continue to create strategies to work effectively in the midst of such differences. For example, one GAL concluded that because these families "are used to having people of the Caucasian race always making decisions for the welfare of their children, you have to let them know that you are sincerely interested in the wellbeing of the child, and to you, it matters not, you are not bringing any personal biases into this; it's really all about the child" (GAL8V). Another GAL acknowledged openly these ethnic differences to the family by saying, "Teach me, tell me . . . why is this your understanding? Why do you think this way?" (GAL16V).

WATCH recommendation for the GAL program:

- *Continue to recruit GALs who represent a variety of ethnic and socioeconomic backgrounds and to train GALs how to respect and engage children and parents from those various backgrounds.*

WATCH recommendation for the Juvenile Justice System:

- *Make the roles of GALs and tribal representatives in IWCA cases distinct and engage the tribe early in order to ensure that a representative attends the CHIPS hearing.*

Identifying major systemic problems

GALs also expressed frustration with major systemic problems in the legal and child protection arena that affect the GALs in their work and the work of the other parties in juvenile court.

GALs must work to establish enough of a relationship with parents that they can easily observe the home and the parents' interactions with their children. But judges in particular worry about the dangerous and hostile situations that GALs might encounter. One judge described what she tells "hostile parents," particularly when children are returning home, "The guardian still has absolute access to your home and to the children. They need to be able to come visit with them and not have you sitting right in the room with them" (JJJ1). This judge mentioned that, of course, social workers face this same challenge.

Another systemic problem, according to GALs, is institutional racism. As one GAL said, "I so often see institutional racism. I see the County just giving families a harder time because maybe they are undocumented. I have heard social workers make value judgments, 'This family, these parents only have a third and fourth grade education; therefore, they just do not value education'" (GAL1V). Another GAL said that the typical GAL, who is retired and white, "doesn't really understand the whole African American dynamic" or "white privilege" (GAL16V).

Other GALs commented on the barriers that prevent social workers from counseling families about birth control. Women who are already involved in child protection cases continue to become pregnant, said one GAL. In too many cases a mother "got pregnant two and three more times, not because she wanted children but because their lives are so messed up that they are not able to pay attention to it." This GAL wished that one of the first questions asked of women in CHIPS cases could be "Do you want more children right or not? Do you feel like your life is ready for it? If not, what are you doing [to prevent a pregnancy]?" (GAL7V).

GALs also have to be creative in working with families who are "dealing with multi-generational poverty and drug abuse and domestic abuse," mentioned one GAL who had her clients write down a list of family members and all the problems these family members had faced. After her clients had completed a family history, she said to them: "Look at all the domestic violence and all the drug use . . . You think that you are just a loser? Why would you think that when if you think back to how your body is constructed and your genes and everything, I mean why wouldn't you have these problems in your life?" (GAL16V).

Budget cutbacks, financial constraints, and staffing rotations also affect CHIPS cases, according to GALs. For example, one GAL noted that the County cannot address families who "have such enormous needs," such as mothers who "really need somebody to be with them all the time . . . and [who feel] if they had that somebody, like their own mother or an aunt or a spouse who wasn't addicted . . . they wouldn't be in child protection" (GAL20V). Moreover, another GAL mentioned, judges "rotate a lot and so

when a judge comes in who hasn't been in juvenile court before, and doesn't really know what he is doing at first, cases may suffer" (GAL4V).

WATCH recommendation for the Juvenile Justice System:

- *Address such problems as racism, intergenerational poverty and drug abuse, and dangerous and hostile environments as systemic problems.*

#### Experiencing boundary confusion

GALs acknowledge the difficulties that they face in maintaining the boundaries of their jobs. Judges perceive one primary challenge is objectivity, the GAL not becoming attached to the child or favoring foster parents over birth parents, for example. As one judge recalled, "I had an 11-day TPR trial [with] very, very horrible facts of sexual abuse, but the guardian from day one was set against the child ever going back to a birth parent, and that birth parent wasn't involved in that sexual abuse, but the guardian had really attached herself to the foster parents" (JJJ4).

The GALs, on the other hand, may celebrate the emotional connections they make and maintain with the children, particularly if there is no one else who has such a connection. At the time of his interview, one GAL had in his caseload a child who had attempted suicide. This GAL said, "I have needed to connect with him," he said, "intensively at times, multiple calls and days and on weekends, connecting with what is going on because I feel like there is nobody else there doing that for him" (GAL14C).

Because of insurance and other restrictions, GALs are not supposed to transport children. Children can run away while being transported by a GAL, and if the child is in an accident while in the GAL's car, the GAL Program can provide no insurance to cover the medical expenses of that child. GALs, however, find themselves in situations where they might be pressured to transport a child or when transporting the child only makes sense. The GAL handling the suicidal boy said that when the boy's grandfather called to the GAL to tell him that the child was threatening to cut his wrists, the GAL could not transport him to St. Joe's shelter for monitoring and care. This GAL had to take "the first position that I am not the person to come in and be the service provider" (GAL14C). But other GALs do mention how they end up transporting a child. "I don't think that the role of a guardian is well defined," said one GAL; "Kids in foster care perhaps want to get involved in after-school activities . . . they don't have the transportation . . . and you think, 'Oh, I could do that; I could pick them up and take them'" (GAL2V), and so they do.

WATCH recommendation for the GAL Program:

- *Recognize that GALs still struggle with whether to transport children or not. In some cases, they might be the only person available to do so and might even be encouraged by social workers or the judge to transport a child.*

#### Dealing with secondary trauma

Most GALs find that emotional stress is a potential, if not expected, result of their work. Particularly if GALs believe particular cases should have been resolved differently, they experience “the kind of thing that you wake up at night” (GAL19C). The newest GALs seem to suffer in particular; one GAL, for example, described how at the end of her first trial, when her “real clear-cut vision of what I wanted for these kids” did not work out, “it was just a lot more emotional than I had expected it to be” (GAL21V).

To handle this secondary trauma, GALs often develop a philosophy that enables them to continue on the job. One GAL reminds herself, for example, “All I can do is what I can do today; I cannot erase the past” (GAL1V). Another GAL recalled what his social work professor told him: “I am not here to suffer with anyone. I am there to help out’ . . . If you suffer with everybody here, you will be a basket case” (GAL13V). Yet another GAL had accepted that her work might just bring partial results. Some GALs might take on their roles because they “want to help people,” she said, but “you are like in the trenches out there. I mean this is hard work, this isn’t easy, this is difficult, straining white-knuckled kind of work . . . and you are going to piss off a lot of people” (GAL16V). Certainly judges are sympathetic to this challenge. As one judge said of her own work, “You know you really have to ask yourself a lot of the time, ‘Am I really making a positive difference here? In the lives of these kids?’” (JJ2).

GALs then mentioned that along with a philosophical approach to their work, they depend on personal outlets and on GAL support groups and mentors. “You know something,” said one GAL, for example, “you have got to have an outlet. You know I usually try to exercise and stuff and work out” (GAL24E). Another GAL described how her support group of GALs had helped her with one case in particular: “I remember saying a couple of months ago, ‘I don’t know, maybe these kids need a new guardian, a new face.’” And then they [members of the support group] asked, “‘What did they do when you last visited with them? What did the 10-year-old say?’ ‘Oh, well, he threw his arms around me.’ They said, ‘Well!’” and the GAL continued with the case (GAL11V). Other GALs find that need to take a break from the job, decrease their case loads, or find another volunteer position.

WATCH recommendation for the GAL program:

- *Continue to encourage mentoring and support groups to address secondary trauma among GALs.*

## **V. Conclusions**

In general, both GALs and judges working within the juvenile justice system in Hennepin County were very generous, open, and honest in sharing their reflections during these interviews. Those reflections identify several ways that the GAL Program can build upon its solid foundation to enhance the job of GALs in representing the best interests of children in CHIPS cases. Those reflections, however, are not confined to the GAL Program. There are several systemic problems that must be addressed in conversations among judges, GALs, and social workers to make the juvenile courts as open and friendly to children and their families as possible.

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<sup>i</sup> Realizing that they were dealing with perceptions offered by the participants and have no useful means to quantify their comments, the researchers followed the best coding and analysis techniques for grounded theory analysis. See, Glaser, B., & Strauss, A. (1967/2007). *The discovery of grounded theory: Strategies for qualitative research*. New Brunswick, NY: Aldine Transaction.

<sup>ii</sup> Several Minnesota statutes, policies, and rules detail the GAL appointment and role, including Minnesota Statute §260C.163, subd. 5; Minnesota Judicial Branch Policy and Procedures 6.03a, IV. General Responsibilities of Guardians ad Litem; and General Rules of Practice for District Courts, Title X. Minnesota Rules of Guardians ad Litem Procedure in Juvenile and Family Court, Rules 901-907.

<sup>iii</sup> National CASA (Court Appointed Special **Advocates** ) Association. (2006). Retrieved from <http://www.nationalcasa.org/>.

<sup>iv</sup> In Minnesota these rules are found under Minnesota Rules of Court, 2010, under Juvenile Protection Procedure, specifically Rules 38.05, subd. 1 through 4.

<sup>iv</sup> The GAL also submits reports for non-routine state ward hearings, for long-term foster care reviews, and for hearings that the GAL is unable to attend, but not for admit/deny hearings, for pretrial hearings, or for trials themselves.