Clinical Sociologists as Guardians *ad Litem*

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Abstract

This article posits that clinical sociologists have ideal expertise to serve courts as guardians *ad litem*. It explains what these court-appointed representatives provide the court, their qualifications, and how they can advocate for the best interests of children in divorce, custody, shared-time, and other caregiving situations. Often, decisions are made by judges with an adult-focused legal lens. Clinical sociologists have a background in both macro and micro issues that impact the wellbeing of children. They are able to contribute and integrate their scholarly and practical knowledge to make better informed decisions that the court can use. Common challenges that guardians *ad litem* face are identified, with insights on how clinical sociological expertise can overcome them.

Keywords: guardian *ad litem*, GAL, clinical sociology, courts, best interest of the child, child rights

1. Introduction

A guardian *ad litem* (GAL) can play an important role in the safeguarding of children in court proceedings by providing the court with objective information that the court can use, directly impacting the living arrangements and future wellbeing of children. Guardians *ad litem* vary in qualifications and background. Many are lawyers and, while their legal background is certainly valuable, they may not have expertise in child development or family dynamics that may allow them to make recommendations that are in the best interest of the child. This article affirms that clinical sociologists have skills and knowledge that make them valuable assets to the court when they

are in positions as guardians *ad litem*. This article explains what GALs are and why clinical sociologists have superior skills that allow them to make effective recommendations to the court. It also identifies common challenges that GALs confront and why their expertise as clinical sociologists can help them to overcome them.

2. Definition of Guardian *ad Litem*

A GAL is an attorney or specially trained professional who is temporarily appointed by civil, juvenile, and family courts to advocate for the "best interests" of vulnerable populations. These populations include children, adults with intellectual disabilities, people who experience physical or emotional disabilities, or older people who are in need of assistance (Aneiros & Prenkert 2022; Boumil et al. 2011; Federle & Gadomski 2011; Fraser 1977; Legal Information Institute 2022; Whitcomb 1988). In the United States (US), GALs are appointed in cases involving child abuse and neglect (Child Welfare Information Gateway 2021a) and are central to custody disputes in family and juvenile courts (Boumil et al. 2011). GAL designation is not to be mistaken for legal guardianship, which grants one person the power to make medical, financial, and care decisions on behalf of someone else (Crowe 2018). At its core, a GAL is an investigator with an "independent voice" (Boumil et al. 2011; Whitcomb 1988, p. 1).

Confusion about the GAL role persists because there is no internationally agreed-upon definition, and GAL duties and qualifications vary by state (Bilson & White 2005; Crowe 2018). In the US, GALs are conflated with a similar role known as a court-appointed special advocate (CASA). While both GALs and CASAs are tasked with advocating for the best interest of the child, there are some key differences (Child Welfare Information Gateway 2021a; Crusco 2008; Orozco 2019). A GAL is a paid attorney, works on a variety of family law cases, and may have up to 30 cases at a time. A CASA is typically a part-time volunteer with legal training, works on one to two cases at a time, and typically serves on cases involving abuse and neglect. While it is technically possible for a child to have both a GAL and CASA, this is not common (Connecticut CASA 2023). GAL and CASA requirements and appointments vary based on US

jurisdiction. Some states permit a CASA to stand in for a GAL, using the two titles interchangeably (State of Maine Judicial Branch 2023).

GALs and CASAs are primarily funded by state and federal budgets. CASA programs also receive donations, and in divorce proceedings that involve child custody disputes, one or both parents may be ordered to pay for the GAL's services (McDuffey 2023). The CASA program is authorized by the Violence Against Women Act (VAWA) to receive approximately $12 million in federal funding each year and is administered through the Office of Juvenile Justice and Delinquency Prevention (OJJDP), a division of the US Department of Justice (National CASA/GAL Association for Children 2023f). States also receive federal funding for their CASA/GAL programs through the Crime Victims Fund, established by the 1984 Victims of Crime ACT (VOCA) (National CASA/GAL Association for Children 2023e). In 2020, the Crime Victims Fund, which consists of fines from federal crimes and forfeitures, dispersed more than $83 million to 500 state and local CASA/GAL programs (National CASA/GAL Association for Children 2023e).

A GAL is distinct from an acting attorney and is not "bound by the child's directives or objectives" (Dane & Rosen 2016, p.13). Crowe (2018) clarifies the different attorney roles on behalf of the American Bar Association:

> *Attorneys, whether they are personally obtained or court appointed, are there to zealously advocate for their clients' wishes, whatever those wishes may be. The attorney's view of the situation does not matter; they are there to represent their client. This differentiates an attorney from a guardian* ad litem*. A guardian* ad litem *is there to represent the respondent's best interests. The "best interests" standard is a subjective one, based more on what the respondent may need than what they may want.*

All 50 States and the District of Columbia appoint legal representation to children in cases of abuse and neglect, and approximately 41 states appoint a GAL to represent the child's best interests. In 16 of these states, the GAL must be an attorney. Eight states require a child to have both an attorney and a GAL. In other states, volunteers who are not attorneys, such as CASAs, may serve as a GAL (Child

Welfare Information Gateway 2021b). Other GALs may be trained as professional social workers, psychologists, clinicians, or those with high-level child development expertise. There are 939 state GAL and CASA organizations in 49 states, comprised of nearly 98,000 volunteers who serve 242,000 children annually (National CASA/GAL 2023b). North Dakota is the only state without a CASA program (National CASA/GAL 2023d).

Internationally, articles 3 and 12 of the Convention on the Rights of the Child (CRC), an international human rights treaty adopted by the UN in 1989 and since ratified by all of the 196 United Nations member countries with the sole exception of the United States, require nations to protect the "best interests" of the child and to ensure that the child's views are heard in public law cases (Office of the High Commissioner for Human Rights 2023a, 2023b). Although the CRC does not explicitly state the appointment of a GAL, member nations have developed various ways to advocate for children in both public and private law (Bilson & White 2005). For example, in the Netherlands the GAL plays a significant role in custody disputes and is a "behavioural expert with expertise in child abduction cases and cross-border arrangements" (Leuftink 2020). In the United Kingdom (UK), a GAL is known as a Children's Guardian and represents the rights of a child in addition to their best interest, and is tasked with appointing their solicitor (lawyer) (Cafcass 2017).

Duties of a Guardian ad Litem

A guardian *ad litem* is broadly described as the "eyes of the court" (Crowe 2018) and is principally an investigator who first collects and consolidates information on the case from people close to the child and family – including parents and therapists – and then drafts a report for the court (Boumil et al. 2011). The report is supposed to be objective and based on the research findings the GAL obtains. GALs generally have immunity from lawsuits alleging they have failed to protect children if they are acting within the scope of their duties. However, GALs may risk losing that immunity if they become active litigants, for example if they sue child protection workers (American Bar Association 1998).

Forty-two states plus the District of Columbia (DC) list specific GAL duties (Children Welfare Information Gateway 2021b, p. 4) which include:

- meeting face-to-face with the child on a regular basis, including before all hearings;
- conducting an independent investigation of the circumstances of the case;
- attending all hearings related to the case;
- monitoring cases to ensure that court orders for services have been fulfilled;
- submitting written reports to the court; and
- making recommendations to the court about specific actions that would serve the best interests of the child.

Crowe (2018) reviewed GAL statutory duties of all states and listed the most common additional responsibilities:

- advising the respondent of their rights (four states);
- interviewing the respondent prior to the hearing (12 states);
- informing the respondent orally or in writing of the contents of the petition for guardianship (seven states);
- recommending whether the respondent should be represented by legal counsel in the proceeding (four states);
- eliciting the respondent's position concerning the proceedings and the proposed guardian (three states);
- inquiring of such person's physician, psychologist, care provider (three states); and
- interviewing prospective guardian by telephone or in person (four states).

Twenty-nine states and DC require the GAL to report the child's wishes to the court, while in 16 states and Washington DC, a separate counsel may be appointed to represent the child's wishes (Children Welfare Information Gateway 2021b). In states where a CASA is appointed in addition to a GAL (p. 5), duties typically include:

- investigating the case to provide independent, factual information to the court;
- monitoring the case to ensure compliance with court orders;
- determining whether appropriate services are being offered to the child and family; and
- preparing regular written reports for the court and parties to the case.

The best-interest advocacy model developed by National CASA/GAL (2023c) incorporates the following five tasks:

- learning all about the child, their family and life;
- engaging with the child during regular visits;
- making recommendations for the child's best interests, including their placement, and necessary services;
- collaborating with others to ensure that the child is provided with necessary services; and
- reporting observations and other information to the court.

At least five states – Idaho, New Mexico, South Carolina, Alabama, and Delaware – blur the line between acting attorney and guardian *ad litem* by assigning both roles to one person, which has the potential of posing an ethical dilemma (Crowe 2018). Most courts, however, do not permit the dual role. For example, a New Jersey appellate panel held that a GAL could not also function as a mediator on the same case, and could not both represent the best interests of the child and mediate finances (Crowe 2018). In an article by Boumil et al. (2011), authors identify conflicts of interest that can arise when the court appoints a dual child's attorney and GAL to represent both the child's wishes and child's best interests. For example, a child's attorney has client privilege, whereas a GAL does not, and anything shared with a GAL could be presented to the court. The authors recommend ethical considerations such as informing the child that their conversations are not confidential. This is important because children could present information that could put them at risk of parental rage when divulged.

Similar findings are reflected in children's reports of their experiences with GAL services. In a qualitative study of interviews with 47 children between the ages of 7 and 16 from counties to the north and south of London, United Kingdom, Ruegger (2021) found that children were dissatisfied that the guardian would share private information, such as how they felt about their biological parents, and were unhappy about the court not being able to influence their choice of placements. They were also disappointed with gradual loss of contact with family members. The authors suggest that GALs could do a better job at explaining the rationale to children, or including their voice in the decisions. Overall, the children were very satisfied with the service, and perceived the GAL's responsibility was to listen to them and explain court proceedings.

Advocacy groups have sought to expand the GAL role and apply the concept to other legal circumstances and environments. The American Academy of Pediatrics (2000) recommended that a medical GAL be appointed in cases of suspected child abuse when Life Saving Medical Treatment (LSMT) is in question, due to two conflicts of interest. Caregivers suspected of child abuse may want to forgo LSMT to avoid charges of manslaughter or homicide; and prosecutors may choose to forgo LSMT to support the same charges. The Academy asserted that "the primary consideration in forgoing LSMT ought to be the best interest of the child, after carefully weighing the benefits and burdens of continued treatment" (p. 1151). In a radical departure from the traditional GAL role, Aneiros & Prenkert (2022) propose a model for a corporate GAL to "ensure that the best interests of children are considered in the development of corporate strategy and decision-making" (p. 2).

History of Guardian ad Litem

The concept of guardianship in the United States is historically rooted in the protection of wealth and the English common law doctrine of *parens patriae*, or the idea that monarchs and the state are obligated to protect vulnerable people (Whitcomb 1998). Federle & Gadomski (2011) trace Western concepts of guardianship to medieval England courts, modeled on Roman law, that appointed a curator *ad*

litem to litigate only on behalf of children who inherited property. Children without land did not have legal protection, and poor laws from sixteenth century England permitted the courts to assume guardianship of orphans and place them in apprenticeships. This two-tiered system of guardianship persisted in American colonies, where poverty was inexplicably linked with neglect and court intervention. Although the concept of parental rights was established in the early 1800s, entitling parents to "the services and labor of their children" (p. 343), courts could remove children from their homes and place them in the care of another "when the parent was deemed neglectful, incompetent or had failed to provide for the child" (p. 346). The doctrine of "parental absolutism" or near-limitless parental control over children, began to erode in the early twentieth century (Fraser 1977, p. 26). Ray (2021, p. 6) explains how the notion of the "best interest" of the child evolved out of custody disputes:

> First, children were considered property; therefore, custody favored fathers, as women could not own property. This view then shifted to the since-abolished "tender years doctrine" in the early 1800s, which preferred maternal custody if the child was young. Finally, the courts arrived at a more gender neutral, child-centered approach in the mid-1800s, known as the best interest of the child doctrine.

In 1912, Rule 70 of the Federal Equity Rules permitted legal guardians to sue on the behalf of children and people deemed incompetent, and to appoint a GAL if none existed (Aneiros & Prenkert 2022). This provision was then included in the 1938 Federal Rules of Civil Procedure (Aneiros & Prenkert 2022; Legal Dictionary 2015; United States Courts 2022). However, guardians were not routinely appointed to represent the best interests of the child, and by mid-century, the "unfettered discretion and inevitable fallibility" of judges was questioned, as was the lack of due process (Federle & Gadomski 2011, p. 347).

The 1970s presented significant legal shifts in the evolution of the GAL from an adversarial role to that of an advocate today (Fraser 1977; Whitcomb 1988). The "best interest of the child standard" (Dane & Rosen 2016) was proposed in the Uniform Marriage and Divorce

Act (UMDA), also known as the Model Marriage and Divorce Act, a 1970 statute created by the National Conference of Commissioners on Uniform State Laws to define marriage and divorce (Uniform Law Commission 2023). Ray (2021, p.6) explains how the UMDA determined the best interest of the child:

> The court analyzes a custody decision based on: the desires of parents, the wishes of the child, the child's interactions with each parent and other related parties, the concerns related to the child's home or school environment, and the mental and physical well-being of all involved parties.

Although it was only adopted by six states (Uniform Law Commission 2023), the UMDA is remarkable because it introduced the no-fault divorce and the equitable division of assets, two concepts that forever changed divorce proceedings around the country (Levy, 1991). In 1963, Colorado became the first state to mandate a guardian *ad litem* in child abuse cases (Fraser 1977), and in 1967 the Supreme Court ruled in *re Gault* that children require legal representation in juvenile delinquency cases (Aneiros & Prenkert 2022). In 1974, the federal Child Abuse Prevention and Treatment Act (CAPTA), signed into law by President Nixon, provided funding to states with the purpose of identifying and preventing child abuse and neglect (Whitcomb 1988). The legislation required states to appoint GALs as a condition of receiving funds. Section 4(b)(g) of Public Law 93-74 (1974) decrees "…in every case involving an abused or neglected child which results in a judicial proceeding a Guardian ad litem shall be appointed to represent the child in such proceedings." CAPTA did not specify standards or qualifications of the GAL, however, and due to economic cost of hiring lawyers, and lack of additional funding from CAPTA, states decided to employ volunteers or people without legal experience in the position (Davidson 1981). In 1977, Seattle juvenile court judge David W Soukup established the first CASA/GAL program of trained volunteers (National CASA/GAL 2023a), after which the program gained national endorsement.

Qualifications of a Guardian ad Litem

In 1980, the National Legal Resource Center for Child Advocacy and Protection sponsored the first national policy conference on GALs that included "over 20 experts in a variety of fields related to child welfare, including judges, attorneys, social workers, academicians, researchers, GAL program directors, and child advocates" (Davidson 1981, p. 21). The group reached consensus on the following GAL qualifications (p. 23):

- The child's appointed representative should always be a separate person from the individual representing the state, county, agency, or parent (or be appointed to represent the child's interests exclusively).
- If the GAL is not a lawyer, he or she must have access to an attorney or independent legal resource.
- The child's independent representative should have the benefit of specialized training. Every GAL and GAL program or system should have multidisciplinary support, both for training and ongoing technical assistance.
- GALs should not be appointed by the court before their roles and responsibilities are defined for them.

Despite these recommendations, today GAL qualifications vary across states. According to the Child Welfare Information Gateway (2021b), 46 states and DC address training or qualifications for people who represent children in child abuse and neglect cases. Sixteen states require the GAL to be an attorney, and 14 states require that attorney GALs receive specific training. Approximately 37 states allow a CASA to be appointed to a court case, and 16 states permit the CASA to serve as the GAL. CASAs are required to have 30 hours of training before serving in their position, and 12 hours of continuing education annually (National CASA/GAL 2023c). Perhaps the greatest qualifications for GAL service – time, experience, and passion for advocacy – are the least official. In a qualitative study of GAL motivation, Cooley et al. (2019) found that life transitions such as retirement was the greatest factor for GALs to enter the

field, followed by an interest in advocacy for children and families, personal fulfillment, and personal experiences with abuse or neglect.

3. Clinical Sociologists as Guardians ad Litem

Clinical sociology provides a useful framework for professionals to use when they serve as guardians *ad litem*. What are clinical sociologists? Clinical sociology "is a creative, humanistic, rights-based, and multidisciplinary specialization that seeks to improve life situations for individuals and groups in a wide variety of settings" (Fritz 2020, p. 4), that can include courts. As sociologists, they are trained in macro, meso, and micro issues, all of which directly and indirectly impact the lives of children and families. Clinical sociology's integrative framework and approaches are used by scholars, policymakers, and courts to address problems in many different situations, including family, school, and community. Clinical sociologists benefit from training that allows them to have extensive knowledge about issues including housing, health, education, economic, social, and psychological factors. They can bring to the court clinical analysis which allows for the critical assessment of beliefs, policies, or practices with an interest in improving a situation. Intervention is based on continuing analysis; it is the creation of new systems as well as the change of existing systems (Fritz 2020, p. 4) and includes an emphasis on prevention. A clinical sociological approach allows professionals to assess situations and prevent, reduce, or solve problems through a combination of analysis and intervention. Many clinical sociologists provide direct therapy with individuals and families. They are also familiar with social systems and resources and can make recommendations for actions that can serve children's best interests. These are valuable skills that they can bring to courts as they serve in a guardian *ad litem* role.

Most clinical sociologists are not attorneys. While many may be knowledgeable in law and court proceedings, they may lack detailed knowledge about specific cases and particular protocols that lawyers naturally have because of their training. This may make it difficult for clinical sociologist GALs to trump what a lawyer may say or demand. In the education and power hierarchy, while PhD clinical

sociologists may have more education than lawyers, in a court of law attorneys may wield power that clinical sociologists do not. There are also ethical boundaries that may occur while allowing the GAL to do their job. For instance, if an attorney demands to sit in on interviews with their parent-client, it influences what is divulged, but it is challenging to tell the attorney that they cannot be present. But when an attorney demands to observe the interview with the children, this is inappropriate because the child will likely feel vulnerable to divulge their actual feelings or experiences. This is an example of an area where the clinical sociologist must rely upon the power of their profession to ensure that good data will be collected, while safeguarding the rights of children, whose rights may not always be the attorney's priority.

Children as Human Rights Holders

Courts have historically advocated for parent and adult needs and rights over those of children. But courts are used to address situations of child abuse, child maltreatment, and decisions over where a child should live, who they should have contact with, and other sensitive issues pertaining to their wellbeing. Children's human rights is an area of study that fits perfectly into a clinical sociological framework (Gran 2020; Vissing 2023). Child rights as a field concerns global, national, community, and family levels of both policy and intervention. The UN Convention on the Rights of the Child focuses on issues of provision, protection, and participation (Office of the High Commissioner of Human Rights 1989). A clinical sociological perspective views children's lives as dynamic; its open-systems approach sees complex systems as interrelated. For instance, children's lives are simultaneously impacted by the operation of economic, education, health, transportation, recreation, religious, gender, racial, and political institutions. A change in one influences the other. A child rights perspective recognizes young people as human beings with agency who both act and are impacted here-and-now, as well as human becomings whose future life trajectories are shaped by the opportunities and challenges afforded them when they are young (James & Prout 1997).

Benefits of Clinical Sociologists as GALs

As a guardian *ad litem* for over 25 years, I have found that my background in clinical sociology has made me an effective guardian *ad litem*. Sociology provides theoretical frameworks to help us to conceptualize why things are the way things are. Conflict theory is of enormous value in examining court decisions and the influence of power, politics, and agenda-staking inherent in the court process. Symbolic interaction theories are essential for GALs for they impact our understanding about the complex dynamics that occur within families. Families and courts are full of expectations about how people are "supposed" to behave; norms, values, culture, and traditions all impact what people do and how their actions are perceived.

The sociological emphasis on research methodology, data collection, and analysis of findings all influence what clinical sociologists may do in their GAL role. It is important to collect unbiased data so the court can make good decisions. Our recommendations to the court can only be as good as the data we collect. In a typical custody case, this requires reports from teachers, counselors, medical practitioners, as well as interviews with each parent and the child or children. I always try to meet with people individually, with no outsiders to influence them. This is especially important when dealing with sibling sets, since one sibling may influence what another may say or refuse to divulge. Usually, parents will want GALs to interview their relatives, friends, or neighbors, but a clinical sociologist must be careful since they are selected because they likely are perceived to be advocates for a particular perspective.

Report writing is critical because the court needs to have all information documented about both the methodology used and the relevance of the findings. Sometimes I use written surveys that I can attach as documentation of what I learned. Other times, that kind of submission is difficult to secure. Because of the conflictual nature of court hearings, some people will be hesitant to divulge all that they think or know. This is especially the case when it pertains to child testimony. In most cases, children are not present at court hearings, nor do they have private conversation with a judge in chambers. If

a child does speak at a hearing, they could be questioned by both attorneys and this poses a very stressful situation for the child.

Synthesis of data is essential, since before a report can be written there are multiple sources of qualitative, and sometimes quantitative, data to make sense of. The court wants the bottom line view of the GAL, whose job is to make sense out of multiple types of information or data. Cases that arrive at the court in which a GAL is needed indicate that there is disharmony and issues that are beyond the capability of parents and their attorneys to resolve. Parent or lawyer anger, hostility, and conflict are overtly and covertly a part of many court proceedings in which GALs may be appointed. GALs become the eyes and ears of the court and can bring forward insights for judges to consider that would otherwise be unavailable to them.

Objectivity and rational decision-making that is focused on securing the best interests of the child are often very hard to find in hotly contested court proceedings such as child custody. Use of good communication to help ascertain what is going on behind the scenes in the family is a gift that clinical sociologists can bring to the court process. Because clinical sociologists have been taught to utilize both macro and micro data, they are able to develop recommendations and advocate for solutions that could save the situation that children may find themselves in. Clinical sociologists don't just figure out what is going on – they use that information to identify best practices for what to do in order to move forward. Table 1 showcases key skills that clinical sociologists bring to the court when they serve as guardians *ad litem*. The skills include research and analytical expertise, good communication skills, therapeutic expertise, and the ability to synthesize a multiplicity of factors into a coherent, cogent problem-solving recommendation that serves to advocate for the best interest of the child.

Table 1: GAL Clinical Sociologist Skills

Good methodology background
Assessment and research skills
Understanding underlying theoretical frameworks
Analytical skills
Objectivity
Listening skills
Good communication skills
Familiarity with the law
Knowledge of the psycho-social world
Knowledge of child development
Understanding of family dynamics and family systems
Knowledge of gender and power roles
Understanding of culture, norms, values, and traditions
Analysis of social systems and resources available for support
Advocacy and problem-solving skills
Knowledge of the community resources
Best interests of the child focus
Therapeutic identification of the etiology of the problem
Ability to recommend appropriate strategies for child safety and wellbeing
Advocate for short- and long-term solutions for best interest of the child
Ability to recommend appropriate strategies for family interventions

4. Methodology

Data for this article was collected in a triangulated methodology (Denzin 1962). One form of data was obtained through direct observation over a decade when I served as a guardian *ad litem* in

Strafford County and Rockingham County courts in New Hampshire. Most of my appointments as a court officer were in family courts dealing with custody, visitation, abuse, mental health, and relationship issues. I served in cases that had single parents, two-biological-parent families, stepfamilies, grandparents as guardians, estranged parents, and families with adopted children. While some cases pertained to only one child, usually there were multiple children's needs to consider, including twins. Actual abuse or abuse allegations were common. Parenting plans were almost always necessary to be constructed. In this article, examples from some of these GAL cases are provided to show the complexities that families face and how a clinical sociology-trained GAL can be helpful to both families and the courts.

The goal of the GAL court reports was to provide a set of observations that I felt the court should consider pertaining to the wellbeing of the child, along with recommendations for actions. My reports were thorough and described the methodology used to make my assessments and recommendations. They typically included: meeting with each parent individually; meeting with each child individually; meeting with school representatives; discussion with therapists, counselors, or other social service providers working with the child and family; discussion with extended family, friends or neighbors, and others as identified to have insights useful to the case. Each lawyer provided me with information that they deemed relevant. Sometimes there were additional legal personnel with whom to meet, as in the murder case that I was GAL in, in which the father murdered the mother, forced the son to move and bury her body, and threatened harm to him if he told. This research process was absolutely necessary because, given time and investigation, initial assumptions of what was going on in the family were often re-evaluated, as sometimes first impressions could be completely incorrect.

The second form of data was obtained through my membership in MAGAL, the Massachusetts Association of Guardians ad Litem. MAGAL provides peer-based resources and support by the GALs to other GALs. They hold regular workshops, conferences, an email chain,

and Zoom support meetings. The shared conversations from dozens of GALs have been helpful in confirming whether my experiences and perceptions of GAL work were consistent with those of other GALs. Through attending these events, I have gained perspective of what other GALs encounter and have learned that my GAL experiences are normative. The conversations shared have ranged from how to interact with families, lawyers, and the courts, ethical dilemmas that GALs face, to legal procedures that GALS should follow. While these conversations are not showcased in this article, they have provided confirmation that what I observed as a GAL is similar to that which others face.

The third source of data was obtained through a detailed review of the literature on Guardians *ad litem* in the United States. This included a history, review of qualifications, benefits, and challenges. This literature has been used in the introduction of this article. Together, these data provide a keen understanding of the role of GALs. This lays the foundation for explaining why clinical sociologists are trained to bring to this role a superb understanding of dynamics that can assist the court in making good decisions.

5. Research Pressures

Being a GAL is akin to being a doll made out of rubbery, stretchy material that can be molded this way or that, depending on how their arms or legs are pulled. Everyone has an agenda for what they think the GAL should do or decide, and the respective players pull and push to have their views seen as the correct ones. The pressures to give GALs access to people or information that the lawyers or parents think may support what they want to see happen in their case are significant. For instance, parents will give names of family or friends who they think will say that they are good parents and that the other parent is less adequate. These types of individuals do provide a window into the life of the child and family – but the windows are colored by filters of what they know, and what they do not. Finding a neutral observer who is not biased and has only the best interests of the child in mind can be challenging. This is why meeting with school personnel or people who know the child

(not the parent) as the primary unit can be quite helpful. Physicians, psychiatrists, social workers, and other clinicians are also valuable contacts because, typically, they operate under a code of ethics that should put the wellbeing of the child first. This means that getting releases of information so that the professionals can speak is important.

Understanding that parents feel caregiving, economic, occupational, legal, social, and reputational concerns is useful in order for the GAL to be sensitive to the nature of the pressures they face. They will transfer the pressures they face onto the GAL, who they may see as the vehicle to relieve them. There are pressures from each attorney, who by design is supposed to "win" the case for their client. There are pressures from the court to have the reports completed in particular formats and in designated timeframes. There are also pressures from the children themselves. Unless they are quite young, children know when trouble is afoot at home, and they are typically being overtly or covertly manipulated by even well-intended parents.

Clinical sociologists are trained in how to identify good research and analyze data. As professionals, we understand the importance of methodology and how to design data collection systems. We understand how theoretical frameworks may alter how someone perceives a situation. As Howard Becker (1967) reminds us, we must always consider whose side we are on; in court proceedings, each attorney is advocating for their client. A GAL must have as their primary consideration the rights and wellbeing of the child. This means that our theoretical positions and our use of data must be focused on the children. Holding steady and not being swayed by the maneuvers of each attorney can be supported through our theoretical and methodological stances.

Challenges Obtaining Data from the Child

Judges in courts do not usually talk directly with the child. There is a concern that if the child talks privately with the judge that each lawyer will want to be present. If a child testifies in court, then they often legally may be asked questions by each of the lawyers. This is a

scary and intimidating situation for the child, especially as they look out and see the faces of their parents. As a result, most of the time children are not asked to testify in court proceedings, especially in cases of divorce.

Obtaining accurate information from children is often challenging. The main reasons stem from their developmental ability to say that is going on in the home, and the other is their willingness to divulge information that they feel could jeopardize them or put them at risk. Young children may not have the verbal or cognitive skills yet to divulge what is going on. They may perceive what is going on in their lives as normal, since they may not have a broader view of what is appropriate and in the best interests of the child. Children may not realize when they are in a dysfunctional situation, and they may think the experiences they have had may be normal, so they don't say anything about them to the GAL.

When conducting interviews with children, if children divulge information that they fear may be used against them if their parents learn what they said, they may be hesitant to talk. Children are dependent upon their parents for love, attention, and resources. Parents are disciplinarians and children may fear their parent's physical, verbal, emotional, social, or financial retaliation if they say or do something that displeases their parents. This puts children in a vulnerable situation when dealing with court representatives. They may not know who to trust, and feel it is safer not to trust anybody.

They also know that parents may pressure them to take sides and prefer one parent over the other. Parents may say disparaging things about the other parent which may bias the child. In most cases, children want to have a positive relationship with both parents and they are afraid to say anything that could make their parent less loving or generous to them. Children understand their dependency role within the family and act to protect what they identify are their best interests.

As brief examples, a five-year old girl talked about how she and her daddy would take a bubble bath together and play with boats while both of them were naked. In another case, a little boy and his father slept together in the same bed with no clothes on. In the former case

there was no sexual abuse but in the latter there was. Both children had learned that nakedness with parents was something all children did. In both cases, the other parent felt this was highly inappropriate behavior when they found out. In the first case, parent education was needed for the father to learn appropriate boundaries, and he readily complied with this newfound instruction. In the second case, we learned that the little boy tried to initiate sex with other little boys at a child's slumber party, having learned this behavior through contact with his father. Court actions and therapy had to be undertaken to protect the boy. The context in which a parent-child behavior occurs is vitally important for the court's determination of a child's safety.

In another case, when a boy indicated that he had been hit by his stepfather and this was reported to the court, the boy ended up with a broken arm and black eye – allegedly from "an accident". He was forbidden to talk with the GAL or social workers again in order to curb any further information he might reveal about his treatment in the home. This example demonstrates what I observed many times – that children who speak their truth about how they are being treated may put themselves at even more risk if they do.

Clinical sociologists know how to interact with children and modify their style to help increase comfort for the child to be willing to talk, while they maintain their professional role of objectivity. One strategy that I have found useful with young children who do not understand why they have to talk to yet another person about what is going on in their lives is to contextualize myself as their advocate. They undoubtedly know that their parents each have attorneys and I tell them that while I am not an attorney, I will act as their advocate, sort of like their lawyer who will represent what they need or want, or to think of me as their guardian angel who is watching out for them and who will tell the court what I think is best for them. This soft-peddling of my role helps them to see the GAL as someone who could help them. But it is also important not to promise the child anything except that you will do what you can to help them – GALs do not have magic wands they can use to make certain things happen in court.

It is also essential to let the child know that what they divulge may be known by the court who can help them. They need to know that this also means that their parents may find out what they say. It is inappropriate to let the child think that their parents may not know what they say. If there are distinct concerns that the child will be harmed as a result of what they say, the court needs to know that and to make decisions on how to protect the best interests of the child. The ethics of working with children must always be respected. Ethical considerations are engrained into our work as clinical sociologists.

Pressures Proving Child Maltreatment

GALs are mandated reporters, and as court officers, they are obligated to reveal when abuse has occurred. There is a delicate line to walk on how best to protect children who are in potentially risky situations. Parents (and typically their lawyers) are trying to shine the best light on themselves and vehemently deny abuse allegations when they arise, and may respond by saying that it is the other parent who is abusive. I typically work with outside professionals (social workers, therapists, teachers, medical personnel, etc) who provide input. In some cases, it seems clear that there is no abuse occurring. In other cases, it appears that abuse has occurred. But sometimes, it is hard to tell. As a GAL, who knows we are being manipulated by all parties to some degree, we have a predicament – do we indicate that the child is being abused when no abuse has occurred and face the wrath of indignant parents OR do we buy the parent's line that no abuse has occurred when the child has actually been maltreated, and thus inadvertently put the child at risk for future abuse?

In one case I worked on, the father alleged that the mother was suicidal and had put sleeping pills in pudding that she planned to serve the children – thus implying that she was planning to kill the children. There was no proof of this, but the mother had attempted suicide before. The father, who was a skilled attorney himself, painted a picture of the mother as being mentally ill and dangerous. However, in the course of my investigation I found that while the mother had some issues, she was in therapy and that it was the

father who was abusing both her and the children. The belligerent father had hired an aggressive lawyer to represent him, while the submissive mother had hired a passive lawyer. I pleaded to the court to assign an outside intervention team from Harvard to do an external assessment because I was so concerned about the children and I felt my recommendations for action were not being taken seriously. My request for the external assessment was denied. A few months later, it was learned that the father had killed the mother and engaged in extensive abuse of the children. The oldest child witnessed the murder and was forced to drag their mother's body to their car and drive with the father to a secluded area in Maine where they dug a hole to bury her.

My sociological training in research helped me to figure out what had happened. In particular, knowing about Type 1 and Type 2 errors led to my publication of an article on how, when in doubt, it is always our professional responsibility to advocate for children's safety, even when parents and other caregivers may deny the incidence of harm (Vissing 2018).

	Null HY is True (No Abuse)	**Null HY is False (Abuse)**
Reject Null HY	Type 1 error Predict abuse when child is not abused	Correct Outcome Predict abuse when child is abused
Fail to Reject Null HY	Correct Outcome Child is not abused and no abuse is predicted	Type 2 error Child is abused and child is not predicted to be abused

Figure 1: Child Abuse Determinations

Figure 1 provides a simplistic explanation of this issue. A null hypothesis assumes that a child is not being abused. An alternative hypothesis would assume that the child is abused. Statistics help us to make decisions about the truthfulness of those assumptions. If a child is not being abused and a decision is made that the child is safe, all is well. If a child is actually being abused and a decision is made that abuse has occurred, then the correct call has been made and

action can be taken to better protect the child. So, half of the time, correct decisions can be made.

The other half of the time, it's more complicated to make accurate decisions. A Type 1 error, or alpha error, occurs when a null hypothesis is rejected. It is the process of incorrectly rejecting the null hypothesis in favor of the alternative. This would mean that the child is not abused (null hypothesis), and yet there is an allegation of abuse. A Type 2, or beta, error occurs when a false null hypothesis isn't rejected. If the null hypothesis states that the child is well-treated (no abuse) when the child is actually being abused, but the worker doesn't catch this and suggests that the child is fine when the child is abused, this is a Type 2 error.

If a correct decision is made, everyone is happy and feels that justice has been achieved. If a child is not abused and there is no substantiation of abuse, then the family and court agree that no abuse has occurred. If a child has been abused and the investigation substantiates that abuse has occurred, then the court feels the GAL has done a good job by documenting that fact that abuse has indeed occurred. This is what the GAL strives for – a clean determination of abuse when it is present, and a clear indication that a child isn't abused when it is actually well-cared for. The problem occurs in the other two cells of the model. When a Type 1 error occurs during child abuse investigation, the investigator makes a judgment that there is abuse when none has actually occurred. When a Type 2 error occurs, the child is abused but the investigator has insufficient information to make that determination. In either case, the parent feels outraged that the GAL hasn't done a good job.

While parent upset may occur, acting on behalf of the protection of the child is the top priority for a GAL. The court can make the determination of what to do. From the GAL's perspective, it is better to risk wrath from the parent and safeguard the child rather than make a decision that placates the parents but puts the child at risk of harm. Understanding Type 1 and 2 errors is part of a clinical sociologist's training – not something that lawyer GALs may know about. This is another example of how clinical sociologists may have superior training as GALs than many attorneys.

Other Challenges GALs Face

Common challenges facing GALs include not just research pressures, pressures from parents, pressures from lawyers and the court, and pressures about how to handle information from the child, but other challenges as well. Submitting the report can be difficult for non-attorney GALs. For instance, some courts will only accept reports when they come through a designated portal that typically only attorneys can access. I submitted a report over a dozen different ways and found that the court would not accept it because it didn't come through in the portal that I could not access. Another problem that most GALs face is getting paid. While parents may be willing to pay their attorney, they are more likely to do so because a) they usually have a choice of lawyer and b) without the lawyer, their case would not be presented by counsel. GALs are appointed by the court. In some cases when parents demonstrate financial hardship, the court may agree to pay the GAL fees. But in most courts that I am familiar with, the reimbursement rate is far lower than what most GALs normally charge. Attorney GALs tend to charge attorney rates, which could be either side of $350/hour, while many courts pay only $60/hour. Non-attorney clinical sociologist rates typically fall somewhere in between.

For private-paying clients, it is recommended to get a retainer ahead of time. GALs have to list time as a lawyer would, with increments of time listed. It is usually easy to get the retainer first, but harder to be paid after a report is filed – especially if it is not in support of what the parent wanted to have happen. There are occasions when GALs have to take the parent to court in order to be paid. Clinical sociologists may find it helpful to create a contract for services with parents and attorneys when they begin a case, to ensure that all parties understand how the GAL will be paid.

Another major concern is for the safety of the GAL. This is particularly important after the GAL makes a recommendation that may be antithetical to parental desires. Most GALs I know have received threats that are designed to intimidate them, particularly around their own safety, the safety of their family, or the security of their property. While actual occurrences of harm seem relatively rare,

"safety first" is a good motto to embrace at every point of the GAL process. The issue of threat was confirmed through conversations with other MAGAL guardians *ad litem*; many of them have also received personal threats, intimidations, manipulations, and have worried about being stalked, physically attacked, or confronted with weapons. Some have discussed how clients have attempted to soil the reputation or credibility of GALs when the clients didn't get what they wanted in a court proceeding. It is as though, because they paid for the GAL services, that the GAL is obligated to do what the client wants. But GALs are not baristas at Starbucks; we have the responsibility to do what we believe is in the best interest of the child, whether the parents or attorneys agree or not.

There are ways to offset potential danger. These include using a business email and a post office box for correspondence, not a personal email or home address. Keep a copy of all correspondence for future reference. When face-to-face meetings are held, find a neutral office or meeting space. Do not use your in-home office for meetings with parents. Libraries often have meeting rooms that GALs can use for free. Meeting where there are other people nearby is wise. Meeting at the office of one of their attorneys is unwise, because it makes it seem as though you are already aligned with that particular attorney/parent. After a contentious court hearing, it is a good idea to watch the other parties leave first, or to have someone escort you to your car.

There may be time pressures in cases. The court may need immediate information that is challenging for the GAL to obtain. This could be because the GAL has a booked schedule, or because the people the GAL needs to meet with are busy or won't make time for the assessment. It typically takes time to locate the right people and to coordinate schedules – GALs aren't the police and cannot just barge in and demand immediate access in most situations. Time can be an issue in another way. Getting a court hearing can take weeks or months in overloaded courts. In the meantime, the child may be in limbo. The child may need interventions, and the GAL wants to see some court action on behalf of the child, but the court is unable to fit them in unless it is a dire emergency. Parents or their lawyers can

petition for the hearing to be delayed, which can also put the child in limbo. Clinical sociologists – who act as teachers, grant writers, researchers, and who write materials for publications – are often under deadlines. We understand the importance of time management and the importance of flexibility in developing our schedules.

6. Conclusions

Being a guardian *ad litem* is not easy work. It is fraught with conflict and challenges. Yet it is a very important task in advocating for the safety and wellbeing of the child. The future of an individual child may rest in the hands of the decision that a court makes.

GALs are in a position of opportunity to advocate for the court to make decisions that will enhance a child's life in both the short and long run. Clinical sociologists come from different theoretical, conceptual, methodological, and pedagogical frameworks than do attorneys. If clinical sociologists want to do court–appointed work such as acting as GALs, it is incumbent upon them to acquire legal knowledge and skills so that they can be effective in the work. While attorneys in the two states that I studied, New Hampshire and Massachusetts, are likely to be GALs, it is important for the court to identify the limitations of lawyer GALs and the benefits that a clinical sociologist GAL can bring to the court.

It is recommended that clinical sociology as a field create more opportunities to train applied and clinical sociologists in elements of law. Knowing how court procedures operate and how to file motions and testify are important skills to acquire. It is also recommended that the field of clinical sociology do more to make the fields of criminal justice and law more aware of the valuable skills that clinical sociologists can bring to the court. We have the research and practice knowledge, systems awareness, and human rights underpinning that help to improve social justice.

References

American Academy of Pediatrics, Committee on Child Abuse and Neglect and Committee on Bioethics. (2000). Forgoing life-sustaining medical treatment in abused children. *Pediatrics, 106*(5), 1151-1153. https://doi.org/10.1542/peds.106.5.1151

American Bar Association. (1998). Court allows suit against guardian. *ABA Journal*, 41.

Aneiros, A.N., & Prenkert, J.D. (2022). In the best interest of children: A proposal for corporate guardian ad litems. *UCLA Journal of International Law and Foreign Affairs, 26*(2), 1-48.

Becker, Howard. (1967). Whose side are we on?. *Social Problems*, Volume 14, Issue 3, Winter 1967: 239–247. https://doi.org/10.2307/799147

Bilson, A., & White, S. (2005). Representing children's views and best interests in court: An international comparison. *Child Abuse Review*, 14, 220–239. https://doi.org/10.1002/car.902

Boumil, M.M., Freitas, C.F., & Freitas, D.F. (2011). Legal and ethical issues confronting guardian ad litem practice. *Journal of Law and Family Studies, 13*(1).

Child Welfare Information Gateway. (2021a). *CASAs and GALs.* https://bit.ly/3uPRUSJ

Child Welfare Information Gateway. (2021b). *Representation of children in child abuse and neglect proceedings.* U.S. Department of Health and Human Services, Administration for Children and Families, Children's Bureau. https://www.childwelfare.gov/topics/systemwide/laws-policies/statutes

Cooley, M. E., Thompson, H. M., & Colvin, M.L. (2019). A qualitative examination of recruitment and motivation to become a guardian ad litem in the child welfare system. *Children and Youth Services Review, 99*, 115-124. https://doi.org/10.1016/j.childyouth.2019.01.031

Crowe, K. (2018). *Statutory provisions for guardians ad litem.* American Bar Association. https://bit.ly/3RjnQX3.

Dane, E. M., & Rosen, J.A. (2016). View from the bench: Parental mental health and Child Custody. *Family Court Review, 54*(1),10-17. https://doi.org/10.1111/fcre.12199

Davidson, H.A. (1981). The guardian ad litem: An important approach to the protection of children. *Children Today, 10*, 20-23.

Denzin, N. (1962). *The Research Act*. New York: Routledge.

Federle, K., & Gadomski, D. (2011). The curious case of the guardian ad litem. *University of Dayton Law Review, 36*(3), 337–352.

Fraser, B. G. (1977). Independent representation for the abused and neglected child: the guardian ad litem. *California Western Law Review, 13*(1), 16–45.

Freeman, M. (2020). *A New Magna Carta for Children*. Cambridge University Press. https://doi.org/10.1017/9781316591468

Fritz, J. (2020). *International Clinical Sociology*. New York: Springer. https://doi.org/10.1007/978-3-030-54584-0

Fritz, J. (1992). Creating successful communities. In R. Straus (Ed.). *Using sociology: An introduction from the applied and clinical perspectives*. General Hall: Bayside NY.

Gran. B. (2020). *The Sociology of Child Rights.* London: Polity. https://nationalcasagal.org/about-us/history/.

James, A., & Prout, A. (1997) *Constructing and Reconstructing Childhood: Contemporary issues in the sociological study of childhood.* London: Falmer Press.

Legal Dictionary. (2015). *Guardian ad litem*. https://legaldictionary.net/guardian-ad-litem/

Legal Information Institute. (2022). *Ad litem*. Cornell Law School. https://www.law.cornell.edu/wex/ad_litem

Levy, R. (1991). A reminiscence about the uniform marriage and divorce act: Some reflections about its critics and its policies. *Brigham Young University Law Review, 1*, 43–77. https://scholarship.law.umn.edu/faculty_articles/504.

National CASA/GAL Association for Children. (2023a) *Our history.* https://nationalcasagal.org/about-us/history/

National CASA/GAL Association for Children. (2023b). *Our reach.* https://nationalcasagal.org/about-us/national-organization/

National CASA/GAL Association for Children. (2023c*). Our work*. https://nationalcasagal.org/our-work/the-casa-gal-model/

National CASA/GAL Association for Children. (2023d). *State and local* programs. https://nationalcasagal.org/our-work/programs/?ps=TX

Office of the High Commissioner for Human Rights. (2023a). *Convention on the Rights of the Child.* United Nations. https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-rights-child

Office of the High Commissioner for Human Rights. (2023b). *Status of ratification: Convention on the Rights of the Child.* United Nations. https://indicators.ohchr.org/

Public Law. (1074). Statute review of public law 93-247. https://www.govinfo.gov/content/pkg/STATUTE-88/pdf/STATUTE-88-Pg4.pdf#page=1

Ray, E. C. (2021). *A ward of the state: The First Amendment as protecting the best interest of the child in custody disputes.* Kentucky Law Journal Online. http://www.kentuckylawjournal.org/online-originals/a-ward-of-the-state-the-first-amendment-as-protecting-the-best-interest-of-the-child-in-custody-disputes

Ruegger, M. (2001). Seen and heard but how well informed? Children's perceptions of the Guardian ad Litem service. *Children and Society, 15,* 133-145. https://doi.org/10/1002/chi.623

Spotlight. (2002). Serving as both GAL and mediator.*American Journal of Family Law*, *16*(3), 223. https://link-gale com.corvette.salemstate.edu/apps/doc/A92404633/AONE?u=mlin_n_state&sid=ebsco&xid=e6307759

Uniform Law Commission. (2023). *Marriage and divorce act.* https://bit.ly/46MUsOM

United States Courts (2022). *Federal rules of civil procedure.* https://www.uscourts.gov/sites/default/files/federal_rules_of_civil_procedure_december_1_2022_0.pdf

Vissing, Y. (2023). *Children's Human Rights in the US: Challenges and Opportunities*. London: Springer. https://doi.org/10.1007/978-3-031-30848-2

Vissing, Y. 2023. A clinical sociologist's journey as child rights advocate. *Clinical Sociology Review*. Volume 17, Issue 1. https://doi.org/10.36615/csr.v17i1.1299

Vissing, Y. (2018). Complexity in the determination of child abuse: A statistical and rights based approach using Type I and Type II error. *Journal of Civil Rights and Economic Development*. Fall 2018. https://scholarship.law.stjohns.edu/jcred/vol32/iss1/3/

Whitcomb, D. (1988). *Guardian ad litem in criminal courts.* National Institute of Justice, U.S. Department of Justice. https://bit.ly/3Nj0PCw

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