Rethinking Parent Representation in Minnesota: Law Clinic Steps Up

by Mimi Laver

Around the country, many communities are improving representation for parents whose children are involved in the child welfare system. By providing high-quality representation for parents, outcomes for children improve. Minnesota’s work in this area hit “crisis” mode in 2008 when public defenders across the state stopped representing parents.

This article describes the journey the child welfare community, along with a local law school, took to address the crisis.

Background

Before 2008, the State Board of Public Defense represented children and parents in Minnesota’s 87 counties. In the years leading up to 2008, the State Board asked the legislature for more funding; the request was denied three times. In 2008, the State Board decided public defenders could no longer afford to represent clients that they were not mandated to serve.

Therefore, the public defenders, except in Hennepin County, stopped representing parents. They continued representing child clients, as directed by state statute. Each county had to provide attorneys for parents on its own. Most counties began contracting with individual attorneys, some former public defenders with experience in child welfare cases and some with little to no experience.

After this decision, the Minnesota Judicial Council named a multidisciplinary parent representation workgroup, chaired by Minnesota Supreme Court Justice Helen Meyer, to report on parent representation in child welfare cases. The workgroup set forth several benefits of representation for parents by qualified and culturally competent attorneys and made two recommendations:

1. Change legislation to mandate that parents have a right to a court-appointed attorney and that the attorney must be qualified and culturally competent.

2. Create a statewide funding source for parent representation, either a separate entity or a specific division within the Board of Public Defense.

To date, while the Judicial Council and legislature have implemented laws and policies mandating minimum qualifications for parent attorneys, neither has adopted laws or policies mandating a parent’s right to court-appointed counsel or creating a separate funding source.

The Clinic

In 2009, Justice Meyer approached William Mitchell College of Law’s Co-Director of Clinical Programs, Professor Peter Knapp, and Resident Adjunct Professor Bradford Colbert, about starting a clinical program focused on parent representation. William Mitchell, Justice Meyer’s alma mater, had 12 clinics and a rich history of practice-centered education. Professors Knapp and Colbert saw a great opportunity to have the law school become more involved in the child welfare community and lend its expertise to training lawyers to improve their practice. Professor Knapp had a “let’s try it” attitude, but wanted to ensure he and Justice Meyer developed a clinic the “right” way.

(Cont’d on p. 38)
While mother lived in unsafe conditions herself and used illegal drugs, and where child occasionally visited her, trial court properly dismissed petition absent evidence that child was harmed physically or mentally from the visits or that he had been exposed to the drug use.

A report was received regarding the child due to his mother’s alleged use of illegal drugs. The agency investigated and found the mother squatting in an abandoned building. She admitted to using cocaine and marijuana and supporting herself by panhandling and prostitution. She reported that she had been living there approximately a year since she became ill with lupus and lost her apartment and her son had lived with his aunt and grandmother during that time. Her son did visit her occasionally at the abandoned building. She claimed she had never used or was under the influence of drugs around him.

The caseworker interviewed the child, his aunt, and grandmother. They confirmed the mother’s account. They also stated that the son was doing well in their care and at school.

A petition was filed alleging that the child was dependent because of the mother’s use of drugs and lack of substance abuse treatment, lack of safe housing, and general failure to provide for his needs.

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The family court dismissed the petition, finding the agency had not met its burden to show the child was neglected. The agency appealed the decision to the Appellate Division of the New York Supreme Court.

The Appellate Division noted that to be found dependent the petitioner has the burden to show by a preponderance of the evidence that the child’s physical, mental or emotional condition is impaired or is in imminent danger of being impaired. Further, state statute provides a specific substance abuse ground which indicates that a prima facie case of neglect is shown by proof that a person responsible for the care of a child repeatedly misuses a drug or alcohol to intoxication. The statute provides an exception if the person is participating in a rehabilitation program.

The Appellate Division found the mother’s living conditions were not suitable. However, no impairment of the child’s health was shown by his occasional exposure to the mother’s living conditions. In fact the evidence showed he was doing well with his relatives. Further, no prima facie case was made as to the substance abuse ground as the caseworker’s investigation did not reveal any testimony indicating the mother ever used drugs or was intoxicated in the child’s presence.

Based on the above, the Appellate Division of the New York Supreme Court affirmed the trial court’s decision to dismiss the petition.
Where child was found at birth to have been exposed to cocaine, but there was no medical evidence of distress or impairment, and no evidence that mother was a substance abuser, trial court was incorrect in taking dependency jurisdiction. Dependency requires harm, imminent danger, or serious risk of harm.

At her son’s birth, the mother tested positive for cocaine and her son’s first stool was found to have cocaine metabolites. The hospital notified the agency and they began an investigation. The investigation revealed the infant’s health was otherwise normal and he was discharged from the hospital after two days. They also interviewed the mother’s five-year-old son and identified no evidence of abuse or neglect of that child.

The agency filed an abuse/neglect petition. The evidence presented was largely the medical records. The mother denied using cocaine, stating that she may have inhaled some when she tried to grab a bag from a friend in her car to dispose of it and the bag broke. The trial court found her explanation not credible. The agency conceded at the trial that there was no evidence of actual harm resulting from the drug exposure but argued the drug use placed the child at serious risk.

The trial court found the child was at risk of abuse or neglect and placed the child in the care of the agency with supervised visitation with the mother.

The mother appealed to the New Jersey Supreme Court.

The New Jersey Supreme Court discussed first whether the language of the abuse and neglect statute, which was written in terms of harm to a “child less than 18 years of age,” applied to a fetus. Several textual citations pointed to it not being applicable to a fetus. First, an agency regulation defines a child as “a person from birth to his or her 18th birthday.” Second, the state legislature explicitly covered “unborn child[ren]” in another statute and could have done so in the abuse and neglect section if they had intended it to apply.

The agency merely presented information that the child had been exposed to cocaine. It did not show that the mother was a substance abuser, or that she even used cocaine more than once. Such information would allow the court to determine whether there was a future safety risk.

The court discussed how expert testimony could be useful in these cases and alternatively how the court could rely on generally accepted scientific evidence. However, it found these issues were not tried at the trial level, and since the child had been returned home, they did not need to be resolved on appeal.

Based on the above, the New Jersey Supreme Court reversed the Appellate Division decision affirming the trial court’s dependency finding.

Nominations Sought for Hardin Child Welfare Award

Know someone who shines in the child law field? Nominations are now being accepted for the ABA Center on Children and the Law’s Second Annual Mark Hardin Award for Child Welfare Legal Scholarship and Systems Change. Nominate today!

Visit the ABA Center on Children and the Law website for nomination criteria and guidelines: www.americanbar.org/child
STATE CASES

Alabama
In case where great aunt and uncle filed dependency petition against grandmother, case was remanded. While court made aunt and uncle and grandmother joint custodians, order was unclear about whether grandmother would have any visitation apart from father. Grandmother could be deprived of contact with child, if the father stopped exercising his right to visit.

Termination of teen mother’s parental rights was improper based on history of disrupting her foster care placements. Although she had acted irresponsibly in the past, her recent actions in graduating high school, enrolling in college, and avoiding negative influences supported her argument that state failed to prove she would be unable to safely parent in the reasonable future.

Arkansas
Trial court’s termination of parents’ rights based on the children being in care over 12 months and parents being unable or unwilling to remedy the conditions was proper. Mother failed to obtain employment despite having advanced education or refrain from using drugs. Father also failed to find appropriate housing, housing his new girlfriend’s child rather than making space for his own children.

Termination of mother’s parental rights was proper even though she complied with some tasks in her plan. While she attended therapy and anger management, testimony from four professionals and her husband showed that while she was able to understand the information discussed with her service providers, she was unable or unwilling to change her behavior, and her anger issues posed a continuing threat to her children.

Colorado
In re L.A.N., 292 P.3d 942 (Colo. 2013). TERMINATION OF PARENTAL RIGHTS, CONFIDENTIALITY
In a termination of parental rights case, guardian ad litem (GAL) was in the best position to determine whether to waive the patient-client privilege and release therapist’s records if child lacked the age or competence to decide. Since statute was silent on discovery of therapist records, except regarding abuse or neglect reports, GAL, as compared to parents, agency, or the court, was in best position to hold privilege. GAL had least practical or ethical conflicts in substituting judgment for the child patient.

Connecticut
In re Jah’Za G., 2013 WL 515417 (Conn. App. Ct.). TERMINATION OF PARENTAL RIGHTS, FAILURE TO IMPROVE
Trial court properly terminated mother’s rights where the psychologist reported after years of treatment that there were still serious risks for further abuse. Mother refused to acknowledge the severe physical abuse of the child’s sibling. Though mother maintained her innocence, court’s prior finding that she had committed the abuse disposed of this issue and supported psychologist’s insistence that she admit abuse to prevent future abusive behaviors.

In re Jason M., 2013 WL 362805 (Conn. App. Ct.). TERMINATION OF PARENTAL RIGHTS, NOTICE
Mother’s right to notice was not violated where trial court proceeded to terminate parental rights in her absence. Agency social worker spoke with the mother twice in the weeks leading up to trial, arranged transportation for her, and sent her a letter. Mother and her counsel were also in court when the trial date was set.

Delaware
Moore v. Hall, 2013 WL 563348 (Del.). TERMINATION OF PARENTAL RIGHTS, LEGAL REPRESENTATION
In termination case sought by mother against the father, where father’s attorney moved to withdraw due to a reported breakdown in communication, trial court erred in instructing father to proceed pro se without engaging in a discussion to ensure he was knowingly and intelligently waiving his right to counsel based on an understanding of the dangers of self-representation.

Florida
In re C.Z., 2013 WL 466209 (Fla. Dist. Ct. App.). DEPENDENCY, ADJUDICATION
Circuit court’s adjudication order was improper where it merely recited the allegations in the agency’s petition. Though the transcript showed support for the judge’s finding of dependency, remand was required to produce an order with specific findings of fact which are required by statute and court rule and serve as an important guide for the parties in planning remedial action.

Georgia
Trial court properly admitted hearsay statements of six-year-old child in criminal sex abuse trial. Hearsay had sufficient indications of reliability since child disclosed the abuse freely to a family member the night of the assault, to an officer the same night, a trained forensic interviewer and the statements were made with no evidence of threats or promises in non-threatening environments and her account was fairly consistent throughout.

Indiana
In re A.M.-K., 2013 WL 621933 (Ind. Ct. App.). DEPENDENCY, CASE PLANS
Juvenile court order requiring mother to take all medications as prescribed unduly interfered with her liberty interest given her objections based on side effects and religion. Because further evaluation was needed to determine which medications she needed to take, the agency would be justified at a later date seeking judicial approval of a plan requiring she take specific medications.

In re D.T., 981 N.E.2d 1221 (Ind. Ct. App. 2013). TERMINATION OF PARENTAL RIGHTS, REPRESENTATION
Minor father’s due process rights were not violated when the court did not appoint a guardian ad litem (GAL) for him in case that ended in termination of parental rights. While the court had discretion to appoint a GAL, father’s attorney and mother were present in the case, making the risk for erroneous deprivation low.
School principal was improperly convicted for failing to make an immediate report of child abuse under mandatory reporting statute. Delay of a few hours was due to the school conducting a reasonable investigation of several issues including viewing surveillance tapes and determining whether an assault by a same-aged peer was considered child abuse. Because the statute requires reports be made in good faith, state failed to carry high criminal burden.

**North Carolina**

In re T.R.T., 2013 WL 599862 (N.C. Ct. App.). DEPENDENCY, VISITATION
Trial court order improperly denied visitation to mother when it provided only for visitation via Skype and without expressly finding that in-person visitation was not in child’s best interests. While state statute allows electronic means of contact to supplement other visitation types, it should not replace face-to-face visits absent a finding of harm.

**Ohio**

In re W.C., 2013 WL 221516 (Ohio Ct. App.). DEPENDENCY, DEFAULT
Default judgment against father who did not appear was improper in adjudication and disposition proceedings. Where father’s attorney reported he had not had contact with father and moved to withdraw, incarcerated father should have been afforded some opportunity to participate directly in proceeding or through a new attorney to protect his due process rights, especially since father had participated earlier in the case.

**Oregon**

In re A.J.C., 2013 WL 356853 (Or. Ct. App.). DELINQUENCY, SEARCHES
Trial court properly denied motion to exclude a handgun found during a warrantless search by school principal and sheriff’s deputy in delinquency trial. Officials had probable cause to search given information they had, including a student’s report that youth threatened to shoot another student the night before, and gun could reasonably have been inside his backpack.

**Texas**

In re A.Q.W., 2013 WL 240288 (Tex. App.). TERMINATION OF PARENTAL RIGHTS, SUBSTANCE ABUSE
In termination proceeding, trial court erred in finding father placed child’s safety at risk due to substance abuse. Father, who only received a case plan requiring substance abuse testing and treatment approximately 30 days before trial, could not have succeeded in treatment even if evidence that he still abused substances was compelling.

**Washington**

In re K.D.S., 2013 WL 535762 (Wash.). TERMINATION OF PARENTAL RIGHTS, BEST INTERESTS
Trial court properly determined it was not required to find that older child was likely to be adopted in terminating father’s parental rights. Where child had serious needs requiring an institutional placement and no one disputed that finding an adoptive home would be easy, statute merely required proof that continuing the parental relationship reduced chances of integration into a permanent home, not necessarily an adoptive home. Father’s erratic visits and arguments with her caretakers diminished her chances of permanency.

**Federal Cases**

Mulholland v. Berks County, 2013 WL 310209 (3rd Cir.). ABUSE, REGISTRIES
In parents’ § 1983 claim against county, there was no violation of due process. Agency policy required staff to update the child abuse registry with additional information about abuse or neglect, but not exculatory information such as denials and recantations. The right to notice and a meaningful opportunity to be heard was protected by the administrative appeals process where an individual could have the registry information modified if aggrieved.
Justice Helen Meyer is a former Minnesota Supreme Court Justice. She now serves as a Distinguished Jurist in Residence at William Mitchell College of Law, Saint Paul, Minnesota. In that role, she pursues scholarship interests, teaches and mentors students, and serves as a role model for law students and young lawyers. She also leads the board of advisors for the law school’s Child Protection Clinic and is working with the school to help establish a new chair in child protection legal research and scholarship.

**Q&A How are you involved with the clinic at the law school?**
I chair the board of advisors of the Child Protection Clinic. There is a full time professor, Joanna Woolman, who provides instruction and supervision of the students. Our clinic is unique, in that in addition to the clinical professor, we have a board of advisors, which includes representatives of all constituents of the child welfare world. The board of advisors does fund raising for the clinic, provides advice to Joanna Woolman, and helps direct next-steps for the work of the clinic. Because the board includes a range of child welfare stakeholders we are able to support the clinic by reaching out to our constituents and bringing the work of the clinic to the larger child welfare community. We are cheerleaders for the clinic and the important work of representing parents in these cases.

**Q&A What do you think is key to the clinic’s success?**
The most important key to success is that the law school has a deep tradition in clinical education. Because William Mitchell has such a strong focus on clinical education there was a natural opportunity to start the clinic at the school. The second most important factor has been finding the right clinical instructor. Joanna Woolman has been essential to the success of the clinic. She is a phenomenal lawyer and teacher.

**Q&A How did your position as a Minnesota Supreme Court Justice influence your view about quality parent representation in child welfare cases?**
At the Supreme Court level we see very few child welfare cases. The few that I did see there were issues raised about lack of quality representation for parents. Often what I would see is that there was a lack of quality representation at the very first hearing in the case. It is critical that parents have quality representation when their case starts—at that first hearing.

**Q&A As a Supreme Court Justice, were you concerned about the representation parents receive at the trial or appellate levels?**
My interest in representation for parents in general did not come through the cases I saw from the bench. I became focused on this issue in 2008 when the Minnesota Board of Public Defense stopped providing representation to parents in child welfare cases. I was worried that there was no unified body providing representation for parents. In place of the public defenders, counties were forced to develop a patchwork model of representation, where every county has a different model. Trial court judges expressed concern that representation was uneven for parents. Some representation was and is great and some representation is poor. I see a need to unify the patchwork to be sure that a parent in one county receives the same opportunity to have quality legal representation at the very first hearing in the case.

(Cont’d from front page.)

**Vision**
Justice Meyer and Professor Knapp refined the vision for the clinic. Joining them were Judy Nord and Ann Ahlstrom, managers of the Minnesota Children’s Justice Initiative (CJI) (Minnesota’s Court Improvement Program) and members of the parent representation workgroup. The vision included providing high quality representation for parents, based on the ABA Standards of Practice for Parents’ Attorneys, as well as providing education for child welfare practitioners throughout Minnesota.

**Leadership**
In early 2011, Joanna Woolman, a part-time public defender and Resident Adjunct Professor at William Mitchell, was chosen to direct the program. Professor Woolman helped further define the vision and implementation plan for the clinic. During spring and summer 2011, she began preparing for the fall semester. She studied the ABA Standards of Practice for Parents’ Attorneys and attended the ABA’s 2nd National Parent Attorney Conference. She also traveled to the Child Advocacy Clinic at the University of Michigan to learn how they run their clinic and she met the director at the new parent representation clinic at University of Iowa’s Law School.

**Advisory Board**
An advisory board formed to guide and develop resources for the clinic. The Board includes all types of child welfare lawyers (those representing parents, the agency and children), members of the bench, two parent representatives (parents formerly involved in the child welfare system who now mentor and coach parents) and other community stakeholders. The board also included many members of the 2008 CJI Parent Representation Workgroup.

**Support**
With financial contributions from Justice Meyer and the CJI, and strong
support from William Mitchell, the Child Protection Clinic officially began on May 17, 2011.

Clinic’s First Year

Students Take Cases

Students participating in the parent representation clinic attended classes and took on legal representation of parents. The clinic’s first four students met once a week for 90 minutes, then worked on their cases under Professor Woolman’s supervision. The course component of the clinic taught students the substantive child protection law in Minnesota and also focused on lawyering skills and ethics.

Students first met their clients at court and continued to meet with them both in court and at the law school throughout the case. During individual supervision time with Professor Woolman, the students discussed case strategy, goals for the client, realistic tasks for the client’s case plan, and what additional support clients might need.

The students also gained skills in communication with other stakeholders and the court. Students practiced their written and oral advocacy skills with the judge (through written and oral motions) but also with other stakeholders between court appearances when they addressed clients’ ongoing needs and concerns.

Students each started with one case. Three more clients were added to the clinic’s caseload in November 2011. Guest speakers, including advisory board members and William Mitchell faculty, spoke with students during their classes. Working directly with clients, the students learned what an emotional experience it can be to have a child removed and have to work with the child welfare system.

The students learned that working with clients involved understanding the law and courtroom skills, but the more important, and more time-consuming, work involved interacting with clients. As one clinic student put it, “It is easy to vilify parents in these cases. There are always things that can be done to make families healthier, but...”

Q&A What are some barriers to parents receiving quality court-appointed counsel in child welfare cases? Are there ways to overcome them?

I see two main barriers to parents receiving quality legal representation in child welfare cases. The first barrier is the inadequate training of lawyers representing parents. Right now there are no standards in Minnesota for training for parents’ attorneys who handle these cases. A standard is being developed, which is a good thing. Training for parents’ attorneys must focus on working cooperatively with the child welfare agency but also working aggressively to get appropriate services to clients. In addition, attorneys need to be trained in how to help clients change their behavior when necessary.

The second main barrier to parents receiving quality representation is funding. We need to elevate this work and help people understand how quality representation for parents helps achieve reunification. Better funding of parent representation will result in cost-savings. There is some support for this in child welfare research and literature, but we need more.

Q&A Is the clinic addressing these barriers?

Yes, the clinic is moving more into a role of providing statewide training to parents’ attorneys. Minnesota has a new minimum standard for parent attorney training. William Mitchell and the clinic plan to be key partners to the state in providing the training.

The work of the clinic and law school will help develop scholarship about the link between quality representation for parents and child welfare cost-savings. The Justice Helen M. Meyer Chair in Child Protection has been awarded to Nancy Ver Steegh, Mitchell’s Associate Dean for Academic Programs. She plans to focus her research on how early appointment of quality representation for parents leads to improved outcomes to children.

Right now there is a lot of anecdotal information about the crucial role parents’ attorneys play in the reunification process. There needs to be better documentation of this link. The clinic is also hoping to contribute to that scholarship. We don’t want to begin gathering and analyzing data too soon, but we have members of the clinic advisory board who are experienced in this type of research. Contributing to this area of research is a very important goal of the clinic.

Q&A You and your husband have provided substantial support to the clinic and the endowed the Chair in Child Protection at William Mitchell. Why is it important to support this area?

By endowing a chair, the hope is the commitment to the welfare of children will really be institutionalized at the law school. Rather than have this issue be the subject of government funding or foundation funding, which can come and go. For me, the endowed chair is one way of forever establishing a place and group of people who care about this issue and will be committed to it.

William Mitchell was the ideal place to create the chair because of their commitment to clinical education. That is so important. We want to grab students and their passion to do good and to meet the students at that point in their career where they are looking for what they want their life’s work to be. I hope that through the clinic and through the work of Professor Ver Steegh we can help the best and brightest students take the passion they have to help families out into the field.

—Interview by Elizabeth Thornton
that doesn’t necessarily mean that we always know what is best for families. Families are nuanced and what works for one family might not work for another. I have learned a lot about how to meet a parent where they are. Working with clinic clients helps me remember that helping parents heal creates better outcomes for kids.”

During the second semester, four more students joined the clinic. The goal for each student was to help families reunify when safe. If that was not possible, the goal was to give their clients a voice in what happens to their children. By the end of the first year, the clinic served 12 clients in Ramsey County (St. Paul, MN); seven were reunified either through a trial home visit or permanent reunification. In its first year, the clinic provided 700 hours of legal work. The work included in-court time and many out-of-court hours helping clients reach their case goals.

**Evaluation**

At the end of the first year, the clinic hired a consultant to evaluate the clinic. The evaluator gathered baseline data and identified areas for improvement. The evaluation consisted of surveys of parents, clinic students, and child law professionals in Ramsey County, such as judges, caseworkers, guardians ad litem, county attorneys, and court administrators. Survey responses for all groups were mixed on each question. Suggested improvements included:

- having more training and supervision for the students,
- not getting hung up on case details and instead viewing the big picture, and
- working more collaboratively with the child welfare agency.

**Client responses.** The clients felt the students understood them and what they needed on their cases and they cared about them. Half of the clients had reunited with their children at the time of the surveys and several others were anticipating reunification shortly after. This outcome was the most positive aspect for the clients.

**Student responses.** The students were positive about their experience but echoed the others in recommending more training and more roleplay before going to court with clients. The clinic students reported learning many lawyering skills through the clinic. As one clinic student said, “Obviously you learn about the law, but the client contact has been amazing. You are really a counselor in every sense of the word. I have learned so much about the court process and how to be an attorney and what it means to advise clients.”

The student also shared that families are much more complicated than she ever knew. Before her experience with the clinic, she had no idea how much government intrusion occurs in families’ lives and how biased the system is against these clients. The students also reported learning about the challenges of working within the child welfare system, including the slow pace of getting services for clients and adapting to different judges.

**Moving the Clinic Forward**

During its final board meeting of the year, the advisory board decided to stay together for at least one more year with Justice Meyer remaining as the chair. They recommended the clinic:

- partner with the CJI on training,
- develop a Parent to Parent mentor program, and
- get involved in more policy and research.

During the clinic’s second year, work focused on these areas as the program expanded. The board also agreed to help raise funds for the clinic.

**Clinic Expands**

The clinic expanded into Hennepin County (Minneapolis, MN) where two students were handling cases. This expansion was important because the students were able to compare practice in two separate systems. The public defender was still representing parents in Hennepin and engaged with the students in that county.

**Training**

Professor Woolman expanded the training component during the second year to focus more on concrete law. Professor Woolman was actively engaged in each case the students were handling. She developed a hearing-by-hearing guide for the students; required more in-court observation for students; and had students speak with judges and other stakeholders in the system before the students started handling cases to gain a more complex understanding of the cases.

The students also spent more time in class discussing the substantive law and Minnesota timelines governing child protection cases. Each student also participated in a mock initial client interview, review of a sample petition, and emergency protective care hearing. The goal was to better prepare students for jumping into the case at the initial hearing. However, on some level, part of the clinic experience is simply jumping in—with the safety net of a supervising attorney.

In discussing the classroom time for the clinic, third-year student Lucie O’Neill appreciated Justice Meyer’s role. Justice Meyer spoke to the class about what she liked to see from the bench and advocated for a “balanced” approach to child welfare. She emphasized for the students the need to protect parents’ rights while they are involved in the system.

**Parent Partners**

The clinic hired two Parent to Parent partners to work with the clients and students. Adding this program to the clinic represented a major step in achieving the goal of having a multidisciplinary program, one of the visions the board had at the end of the first year.

Larene Broome, the Parent to Parent coordinator, was involved with parent partner programs for seven years before joining the clinic. She and the other parent partner have
been involved with four clients’ cases where their role largely focused on “mentoring and advocating” for clients. Broome shared that she is able to make it easier for the student attorneys with the social services aspect of the work. Her own life challenges have helped her understand the clients and “walk with them through each step” of the process. Being part of a legal clinic makes the job of supporting clients easier than when she worked for a social service agency.

As part of the legal team, Broome does not have to report each time a client “slips” and she feels this takes weight off the client. She believes parents should receive as many resources as possible and that the system should be more flexible. She wants to be part of a program that is working to change policy and practice to treat parents well. Broome is happy to be part of what she hopes will be a long-term program that teaches students to be specialists in the child welfare field.12

Lucie O’Neill, a third-year law student in the clinic who represented a mother in Hennepin County, found the parent partners helpful in her case. She described the first hearing she had in her case. The mother was “overwrought” and could not hear what O’Neill was telling her. The parent partners came to the rescue, working with the mother to get her to agree to visitation. They helped mediate between the client and the agency and made a true difference for the family.

Policy and Research
Professor Woolman and others at William Mitchell are working with Judy Nord to design the curriculum and deliver the training for all Minnesota parents’ attorneys, as newly mandated by the legislature. The program will take place in spring 2013. Additionally, Professor Woolman anticipates outlining a policy agenda for parents’ attorneys during 2013.

Promoting Quality Parent Representation
As the clinic began meeting its goal of providing top-notch representation for parents, while training lawyers for the future, Justice Meyer continued to believe in the goals in the Workgroup’s report. She wanted consistently high quality-representation for parents throughout Minnesota.

By educating the state legislature, Justice Meyer achieved another of her goals in late May 2012. At that time, the legislature passed a statute requiring court-appointed attorneys in child welfare cases to meet minimum qualifications set by the Judicial Council. Once the law was passed, the Judicial Council worked hard to develop the minimum requirements, effective June 1, 2013.

The statute requires an attorney who wishes to be appointed to represent parents to have either:
- two years’ experience, including handling at least 10 cases; or
- 18 hours of parent representation-specific training.

Alternatively, the attorney may be supervised by an attorney who qualifies for appointments under the first two options. Every attorney will also have three hours of training related to juvenile matters per year.

The CJI is charged with developing the required six-hour core skills training and offering the additional 12 hours that new attorneys must complete. As part of its plan for the future, William Mitchell, and the clinic in particular, hopes to play an active part developing and conducting these trainings.

Lessons Learned
Making lasting, systemic change for families takes time and effort by many people in a community. The child welfare stakeholders in Minnesota understood that and were willing to work together and try new things. They knew that not everything would work, but if they didn’t try, nothing would change. They also had strong leadership from the child welfare agency and the court who were invested in improving the lives of parents and children. Some keys to their success follow.

Include Different Perspectives
When the clinic advisory board was asked why such a multidisciplinary group of professionals would put their energy into this effort, the group emphasized the multidisciplinary nature of everything they’d done through the CJI. If they didn’t value different perspectives and work to get on the same page, nothing would get done.13

Overcome “Business as Usual”
Changing the way practice is done can be off-putting for the people doing the work. For example, in Ramsey County some agency social workers and county attorneys had to make adjustments to work with the clinic. Some county attorneys did not understand why they should be involved in “training the other side.”14 Some caseworkers felt the students were getting in the way of the workers’ relationships with their clients. Students expressed that they didn’t think caseworkers and attorneys were used to hearing the question “why” when they told a student attorney or clinic client that something couldn’t be done.15 Changing the mindset of “this is how we do things” is difficult.

Garner Child Welfare Community Support
Despite the challenges, the clinic has had broad support in the child welfare community. Board member Jim Backstrom is the county attorney in Dakota County, the third largest county in Minnesota. Backstrom was on the 2008 workgroup and has been on the clinic board since it began. In his view, when the child welfare agency removes a child, the government must do the right thing for that family; part of the responsibility is ensuring the parents have quality representation.

The parent’s attorney can help the parent understand that they need to get assistance. The attorney can negotiate a positive plan for the family and help the case move in a timely way. Backstrom believes the clinic can help promote quality, uniform parent
Why High Quality Parent Representation Matters

Interview with Erin Sullivan Sutton

Erin Sullivan Sutton is the Assistant Commissioner for the Minnesota Department of Human Services, Children and Family Services division. She oversees programs and policies that promote economic stability, child safety and permanency, child care, child support and successful transition for immigrant families in the state of Minnesota. Her 29-year career has evolved from social work to policy reform and advocacy for families at the state and national levels. She is a past president of the National Association of Public Child Welfare Administrators and recently has been involved with a number of judicially led state task forces looking at improving legal representation for parents in the child welfare system. She is also an original member of the advisory board for the William Mitchell College of Law Child Protection Clinic. In this interview, Sutton Sullivan explains why high quality representation for parents is a priority.

Q: What is the role of a parent’s attorney in child welfare cases?

Parents’ attorneys have a difficult job. They need to be zealous advocates for their clients. They also need to counsel their clients, give them good advice, and explain what the potential consequences of their action or inaction may be. Parents’ attorneys in child welfare cases must be much more than just zealous advocates. They have to build trust with their clients, who are going through a tremendously difficult situation. They need to know what services are available to families; they must understand and explain the timeframes for reunification and permanency.

Q: Why should child welfare agency leaders care about quality legal representation for parents?

Ultimately, quality legal representation for parents helps children and families. The child welfare agency has a responsibility to keep children safely at home when possible and to help families access services to keep their children safe, if services are needed. When children cannot safely remain at home and placement is necessary, that placement should be stable and as limited in time as possible. Quality legal representation for parents helps hold the child welfare agency accountable for its responsibilities. It helps judges make good decisions and look at issues from not just the perspective of the child welfare agency. The amount of power and control in the hands of individual social workers on individual cases should not be unchecked. There needs to be more than one decision maker weighing in on the process. I think the child welfare field now recognizes that children should not grow up in foster care. Good legal counsel for parents helps assure that doesn’t happen on a case-by-case basis.

Q: Does quality legal representation for parents have an impact on safety, permanency, and well-being for children and families?

Yes, absolutely. As I said before, quality representation for parents helps assure that children are not unnecessarily placed in foster care. Many families involved with the child welfare system are dealing with poverty-related issues. Good parents’ attorneys help assure that we are not placing children into foster care because of family poverty. If a child truly cannot safely remain at home, parents’ attorneys can help parents understand what the safety issues are and can help parents address those issues—that leads to faster and more successful permanency and greater family well-being.

Investing in the Future

According to Judy Nord, Staff Attorney and Manager at the CJF, the court used $80,000 of its training dollars to support the clinic for its first two years. The court anticipates the clinic will become self-sufficient by the end of those two years. Nord explained that the court and the child welfare agency believe it is important to understand what parents need and then provide the parents with the advocacy to fulfill those needs. When the clinic was starting, many forces came together at the same time. “There was passion about the issue, dollars, and it was a rough time for attorneys.”

Nord sees this clinic as an opportunity to increase training opportunities for lawyers and develop standards. As the clinic expands into more counties and judicial districts, it will demonstrate a standards-based model of representation.

Sustainability

With the goal of making the clinic self-sufficient, William Mitchell hired a half-time development director to raise funds. The development director works with local and national foundations on grants for the clinic. Board members are also working to raise funds. The “can do” attitude that Justice Meyer started this project with has spread through everyone involved.
Expansion
Many people want to see the clinic expand beyond Ramsey and Hennepin Counties. This expansion will need to be done carefully. Linda Forman and Anne Guenzius from the Children’s Law Center of Minnesota support the clinic and want to see the model spread, but they cautioned that they have seen many failed clinics because of weak supervision. They complimented Professor Woolman’s careful, hands-on approach with students. They worried that if the clinic spreads too far from William Mitchell, or takes on too many cases, the level of supervision will not be as high. The clinic, they believe, must be planful in how it handles cases after students have left the clinic and how it will expand.19

Policy, Practice and Research
In September 2012, Justice Meyer and her husband Bill Bieber created a $1 million chair at William Mitchell. The Justice Helen M. Meyer Chair in Child Protection was awarded to Associate Dean for Academic Programs Nancy Ver Steegh. Dean Ver Steegh will focus on research, policy, and changing practice to improve outcomes for parents and children. The intent of creating the chair is to have someone work with the Child Protection Clinic and make the focus on child welfare a permanent area of study.

Stronger Parent Representation
By investing in students, William Mitchell and the Minnesota child welfare community have the opportunity to yield a high return on the investment. The clinic is providing quality representation for its clients, but more importantly for the system. Young lawyers are learning to be leaders in the system when they leave law school. The clinic can also play a role spreading high-quality representation throughout the state by developing and using practice standards, creating and providing training for practicing attorneys, and sharing the results of the ongoing data analysis of the

Q&A Why did you become involved in the William Mitchell College of Law Child Protection Clinic?
I was asked to be on the advisory committee for the clinic and was honored to be a part of it. Historically, parents in Minnesota have been represented by the public defender’s office. Many public defenders do a great job representing parents. But, sometimes, because of their caseloads, they don’t have the ability to meet and spend time with their clients in the counselor role. They can bring a criminal defense mindset to their representation, which doesn’t always help their clients. Helping clients access services and holding the child welfare agency accountable to prevent placement in the first instance is so important. Having lawyers well-trained in child welfare helps with this. I’m hoping the clinic will help create a greater number of lawyers who want to do this work.

Q&A What is your role with the advisory committee?
I try to support the work of the clinic. I recommended that parents who have been through the child welfare system be added to the committee. As we work to reform the child welfare system, we must hear from people who have been through the system. I have also been able to provide information to the committee about how the child welfare system in Minnesota operates, what our goals are, and resources available to families.

Q&A What is the child welfare agency’s role in supporting quality legal representation for parents?
The child welfare agency should work with other child welfare stakeholders to provide and support quality training, as well as provide data and information. It’s important that we work with the broader child welfare community to really look at how we safely reduce the number of children in foster care and prevent children from growing up in foster care.

Q&A What are some barriers to high-quality legal representation for parents?
In Minnesota, one of the biggest barriers is resources—how much attorneys are paid and inconsistent pay from county to county. Another barrier is how we make this work attractive to attorneys. Representing parents is so important. How do we get attorneys to see that this is a great field to go into where you can make a real difference in the lives of families? That is part of the promise of the clinic. The support and cheerleading we get from Justice Meyer has also helped build momentum in the legal community around the importance of this work.

Q&A Do you think quality legal representation for parents should be supported by federal funds?
The federal government should share the cost of state child welfare systems and not pay for just foster care. Part of that should include support for legal representation for parents. What we know about foster care has changed over the years and federal policy has shifted significantly. Federal funding has not followed federal priorities, and it should.

—Interview by Elizabeth Thornton
Understanding Neglect’s Toll on Child Development

Child neglect accounted for 78% of all maltreatment cases nationwide in 2010. That’s more than half a million documented cases of neglect in the United States. The rate is far greater than other maltreatment forms for that year: physical abuse (17.6%), sexual abuse (9.2%), and psychological abuse (8.1%). Yet why does neglect get less attention?

A new report by the National Scientific Council on the Developing Child at Harvard University explains the types of neglect that significantly impact young children’s development. The report, *The Science of Neglect: The Persistent Absence of Responsive Care Disrupts the Developing Brain,* synthesizes research on child neglect in the early years, drawing on studies of young children who experienced severe neglect and extreme deprivation in institutional and family settings.

Despite data showing neglect is the most common form of child maltreatment, neglect receives less public attention than physical abuse. The report distills neglect research and provides a framework for developing strategies to protect children from these harmful forms of neglect. Read on for highlights.

Two Misconceptions
Two common misconceptions about neglect are:

#1 Physical abuse does greater harm to children’s health and development than severe neglect. Research clearly shows that young children who experience long periods of severe neglect or deprivation have more severe cognitive impairments, language deficits, academic problems, withdrawn behavior, and problems interacting with peers when compared to children victims of physical maltreatment. This suggests that severe neglect may do more damage to the brain architecture than physical abuse.

#2 Removing a child from a neglectful setting will produce positive outcomes.

Most neglected children need therapy and supportive care to support their recoveries. Removal from neglectful caregivers alone does not address the impact the neglect has had on the child. Without targeted interventions and services, severely neglected children face a greater risk of continued problems.

How Neglect Affects Young Children’s Development
Severe neglect can harm young children’s development in the following ways:

Abnormalities in the structure and functioning of the developing brain.
Children who experience high levels of social neglect early in life show lower electrical activity in the brain, comparable to nonneglected children who have trouble with attention and learning. These children also show decreased brain metabolism and poorer recoveries. Removal from neglectful settings will produce positive outcomes.

Altered development of biological stress-response systems, making it hard for children to cope with adversity.
Significant deprivation disrupts the two main stress response systems in humans: sympathetic-adrenal-medullary system (produces adrenaline and affects heart and respiration rates), and the hypothalamic-pituitary-adrenal axis (elevates the stress hormone cortisol).
Severely neglected children show abnormal cortisol levels that can cause structural weakness in the developing brain architecture; the resulting adverse effects could be lifelong.

Abnormal physical development and impaired immune systems. Severe neglect is linked to delayed growth in head circumference in the early years. Extreme deprivation (e.g., institutional settings where children are “warehoused”) is linked to pervasive growth problems (smaller body size, impaired gross motor skills and coordination), compromised physical health, and heightened risk for infection and stress-related diseases during life.

Emotional, behavioral, and interpersonal relationship difficulties during life. Chronic neglect can lead to insecure or disorganized attachment to primary caregivers that affect interactions with others as children mature. Weakened social skills and fewer peer interactions often result. Chronically neglected infants and toddlers often show increased negative emotions, including poor impulse control; lowered enthusiasm, confidence and assertiveness when problem-solving; and an inability to discriminate emotions. As they age, emotional problems may emerge, including low self-esteem, poor self-confidence, and lack of assertiveness. Personality disorders, anxiety, and depression are also risks.

Cognitive problems, academic delays, poor executive function skills, and difficulty regulating attention. Cognitive impairments and academic delays are common among severely neglected children. These children also have more problems in school and referrals to special education than nonneglected children. Problems that continue into adulthood include low IQ scores, reduced high school graduation rates, and poor reading skills. Executive function skills, which are key to operating effectively and independently in life, often suffer. Serious neglect also affects children’s ability to regulate attention, causing them to be unfocused and unable to pay attention at school.

Promoting Children’s Recoveries Children who experience severe neglect can recover with certain supports.

Appropriate, timely interventions can reduce and reverse severe neglect’s harms. Removal from severely neglectful environments to nurturing settings is known to enhance children’s recoveries. Removal alone is not enough, however. Systematic, evidence-based, long-term interventions are also key to

### Four Kinds of Neglectful Care*

The Harvard report outlines four types of neglect and their effects as a framework for devising strategies to protect children.

<table>
<thead>
<tr>
<th>Type of Neglect</th>
<th>Definition</th>
<th>Impact</th>
<th>Intervention</th>
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<tbody>
<tr>
<td>Occasional Inattention</td>
<td>Intermittent diminished attention in an otherwise responsive environment.</td>
<td>Can be growth-promoting under caring conditions.</td>
<td>None needed</td>
</tr>
<tr>
<td>Chronic Understimulation</td>
<td>Ongoing, diminished level of child-focused responsiveness and developmental enrichment.</td>
<td>Often leads to developmental delays and may be caused by a variety of factors.</td>
<td>Interventions that address caregivers’ needs, and provide high-quality early care and education for children.</td>
</tr>
<tr>
<td>Severe Neglect in a Family Context</td>
<td>Absence of “serve and return” (give and take) interaction between child and caregiver; failure to provide basic needs.</td>
<td>Range of harmful impacts, from developmental impairments to threat to health/survival.</td>
<td>Prompt intervention to assure caregiver responsiveness and address developmental needs of child.</td>
</tr>
<tr>
<td>Profound Deprivation in an Institution</td>
<td>“Warehouse-like” conditions with many children, few caregivers, and no individualized adult-child relationships that offer reliable support.</td>
<td>Basic survival needs met, but lack of individualized attention can cause severe impairments to cognitive, physical and psychosocial development.</td>
<td>Prompt removal to stable, caring, and socially responsive environment.</td>
</tr>
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healing. For example, systematic interventions targeting the social-emotional needs of young children in foster care can improve their ability to regulate stress response at the same level as nonneglected children.

**Promising Interventions:**
The report identifies the following three interventions as effective for children who have experienced significant neglect:

- **Attachment and Bio-Behavioral Catch-Up (ABC) Intervention:** Short-term intervention designed to improve attachment regulation and bio-behavioral regulation in children who have been abused or neglected.
  
  **Targets:** Infants and toddlers in foster care, relative care, or living with birth parents.
  
  **Strategy:** Strengthen parents’/caregivers’ sensitivity and responsiveness to infants’ cues and help them provide a setting that helps them improve their regulatory abilities.
  
  **Evidence:** Children receiving ABC developed more secure attachments to caregivers than a control group and were better able to regulate their stress response and behavior.

- **Child-Parent Psychotherapy (CPP)**
  
  Treatment model aimed at improving social-emotional, behavioral, and cognitive functioning in children exposed to interpersonal violence and other traumatic events.
  
  **Targets:** Children 0-5 who experience mental health, attachment, and/or behavioral problems resulting from trauma.
  
  **Strategy:** Repair trust in parent-child relationship by building parent’s capacity to protect and help child regain sense of safety.
  
  **Evidence:** Five randomized studies document CPP’s effectiveness in anxiously attached toddlers, children who witnessed domestic violence, maltreated infants, maltreated preschoolers, and toddlers of depressed mothers.

- **Multidimensional Treatment Foster Care Preschool Program (MFTC-P)**
  
  Early intervention program aimed at promoting healthy self-regulation, positive relationships with caregivers and peers, and enhanced school readiness in vulnerable children.
  
  **Targets:** 3-6 year-old children in foster care with neglect histories.
  
  **Strategy:** Help caregivers provide positive, responsive, and consistent environments for young children by reinforcing positive behaviors and setting limits to address problem behaviors. Behavioral therapy and playgroups offer added support.
  
  **Evidence:** Preschoolers receiving MFTC-P showed improved attachment-related behaviors, fewer behavior problems, and improved stress responses.

**Children’s recoveries from neglect are influenced by the severity, duration, and timing of the neglect, and the timing and type of intervention.**

Children who experience more chronic neglect during early childhood tend to withdraw and show more anxiety and mood changes when stressed than those who experienced less severe neglect. The longer the neglect occurred, the more likely the child will have deficits in attention, academic achievement, brain activity, and the ability to regulate stress response.

**Wrap-Up**
The report finds that the toll of severe neglect on young children is underestimated. Research shows severe neglect disrupts young children’s cognitive and executive functions, stress response systems, and brain architectures. Without intervention, these disruptions can lead to learning problems, social adjustment difficulties, mental health problems, and physical disease and other challenges. Advocacy for these children and families is critical. Assuring nurturing caregivers, combined with tailored services, can help these children overcome these challenges if implemented early and in a quality way.

—Claire Chiamulera, CLP Editor

Access the report, *The Science of Neglect: The Persistent Absence of Responsive Care Disrupts the Developing Brain*, published online: [http://developingchild.harvard.edu/resources/reports_and_working_papers/working_papers/wp12/](http://developingchild.harvard.edu/resources/reports_and_working_papers/working_papers/wp12/)

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Role of Judges in Implementing Fostering Connections: Tribal Foster Care and Adoption Access Provisions

by the Grandfamilies State Law and Policy Resource Center

The Fostering Connections to Success and Increasing Adoptions Act, Public Law 110-351 (“Fostering Connections”), is a federal law primarily designed to promote permanent families for children and youth in foster care. This law encourages:

- maintaining family connections (June 2012 CLP),
- supporting youth transitioning from foster care (August 2012 CLP),
- ensuring the health and educational well-being for foster youth (October 2012 CLP),
- maintaining sibling ties (Jan. 2013 CLP), and
- providing many Native American children important federal protections and support for the first time by allowing Tribes to directly administer their local programs authorized by Title IV-E of the Social Security Act (this issue).

Read on for a brief overview of the provisions for Native American Tribes. General judicial considerations for implementation and questions to ask from the bench to help ensure compliance with the law and best practice are provided.

Title III: Tribal Foster Care and Adoption Access

Section 301: Equitable Access for Foster Care and Adoption Services for Indian Children in Tribal Areas

Section 302: Technical Assistance and Implementation

Overview – Section 301

Until passage of Fostering Connections, Indian tribes did not have the option of accessing Title IV-E funds directly in order to administer their own foster care or adoption assistance programs. In the past tribes have had to enter into state tribal agreements with state Title IV-E programs and comply with all state and federal requirements in order to obtain Title IV-E funds for children in tribal care.

Fewer than 100 tribes have had access to Title IV-E funds through such agreements. Further, the Title IV-E agency is expected to negotiate these agreements in good faith with all parties given the opportunity to contribute to the agreement. Under Fostering Connections, tribes may now directly access Title IV-E funds for local tribal foster care, guardianship assistance and adoption assistance programs.

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Fostering Connections encourages tribal-state collaboration and allows states and tribes to continue to operate or create Tribal/State agreements to administer the IV-E program and, for the first time, allows tribes or tribal consortia to directly access funds from the federal government and administer the Title IV-E funds for children in the tribe’s care. Tribes who directly contract with the federal government for Title IV-E funds will have to set up their own programs, standards, rules, and policies that will have to be consistent with federal requirements.

These tribal programs and policies will permit tribes more flexibility on important cultural issues, such as: licensing standards for foster families, how to define “aggravated circumstances” and “compelling reasons”, not including termination of parental rights as a dependency outcome, and the use of permanent and subsidized guardianships as a permanency outcome rather than adoption. Fostering Connections also allows tribes to access a portion of the state’s Chafee Foster Care Independence Program (CFCIP) funds and requires the tribe to provide independent living services for tribal youth in the state.

Additionally, nunc pro tunc tribal court orders to document reasonable efforts and contrary to the welfare findings are allowed, if previous orders did not include these findings. These orders are allowed for the first 12 months that a tribe, tribal organization or tribal consortium operates a IV-E funded program under this Act in order to access Title IV-E funding for children who are already placed in care.

Overview—Section 302

To support this initiative, Fostering Connections requires the Secretary of the Department of Health and Human Services to provide technical assistance and implementation services dedicated to improving services and permanency outcomes for Native American children. One time grants of up to $300,000 will be available to tribes that apply for funding to assist in the developing and the transition to administering their own tribal Title IV-E program directly.


For a list of tribes that have been awarded development grants to date, see:

- www.acf.hhs.gov/programs/cb/programs_fund/discretionary/2009.htm, and
Judicial Considerations

Is a nunc pro tunc order needed to document reasonable efforts and contrary to the welfare findings?

- This is allowed only for the first 12 months that the Title IV-E funded program is in effect, if such finding was not previously made by the court.

- Fostering Connections requires such documentation to determine child and case eligibility for Title IV-E reimbursement.

Have any tribes, tribal organizations or consortia in your jurisdiction applied to administer their own Title IV-E program?

Have any tribes, tribal organizations or consortia in your jurisdiction applied for a Tribal Title IV-E Plan Development Grants to administer their own Title IV-E program?


Questions to Ask from the Bench

Has the agency determined if the Indian Child Welfare Act (ICWA) applies?

Has the Tribe taken jurisdiction over this child for purposes of the Indian Child Welfare Act and Title IV-E?

How will services continue to be provided to the child and family once the case is transferred to the Tribe?

Does the Tribe need a nunc pro tunc order and if so, what were the reasonable efforts and contrary to the welfare circumstances at the time of the removal?


Practice Tips

Maintaining Sibling Ties

EPIC ‘Ohana, Inc. has produced a good video highlighting the importance of siblings for children in foster care. It offers these good tips:

- In the United States, approximately 70% of children in foster care have at least one sibling in care. More than half of those children are separated from one another.

- Separated siblings are more likely to have issues with foster care placements, behavioral challenges and running away.

- Place siblings together in the same home when possible.

- Place siblings nearby if they are separated, preferably in the same neighborhood and school district.

- Arrange for regular visits and other forms of contact.

- Never use sibling visitation as a form of discipline.

Source: EPIC ‘Ohana, Inc. “Brothers and Sisters: Keeping Siblings Connected in Foster Care.” Watch the video at www.youtube.com/watch?feature=player_embedded&v=E9uoqOWHosg#!