A Message from Dean Rogers on Clinical Education at Moritz Law

As this newsletter goes to press, our clinical students and faculty are preparing briefs to be filed in the U.S. Supreme Court. Just last year, a state supreme court adopted the viewpoint of their amicus brief in a case involving placement of sibling children. The list of achievements goes on but so does, in a quieter way, the learning.

Law schools typically prepare future lawyers by teaching legal analysis, law, and lawyering skills. Clinical courses offer opportunities for students to combine these three areas of teaching and receive detailed feedback. We have been fortunate at Moritz Law to offer remarkable rich faculty analysis to students during the “rubber hits the road” clinical experience. It’s a distinctive model—two faculty members, one steeped in theory as a tenure-track appointment and one deep in practice as a clinical professor—for every small class.

This rich opportunity to learn is open to every student. The college commits resources for about 11 semester clinical offerings each year. The topics include civil, legal issues of children, criminal, legislation, and mediation.

The combination of success, faculty-student ratios, access to enrollment, and a variety of opportunities makes the Moritz Law clinics preeminence among law school clinical programs.

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Moritz Law Clinic Students to Assist with United States Supreme Court Argument

On October 12, 2004, the U.S. Supreme Court granted certiorari in Cutter v. Wilkinson, a case in which attorneys associated with Moritz Law will argue both sides. David Goldberger, Isadore and Ida Topper Professor of Law and Director of the Moritz College of Law Clinical Program, will represent prison inmates seeking protection of their statutory rights to religious exercise. Ohio Solicitor Douglas Cole, who is on leave from the Moritz Law faculty, will represent the State of Ohio. Students from the clinical programs’ Civil Law Practicum will assist Professor Goldberger in preparing his brief and other documents for the argument, which is expected after the first of the year.

The case involves prison inmates who sued the State of Ohio under the Religious Land Use and Institutionalized Persons Act, claiming they were denied access to religious literature and ceremonial items. The statute, which was enacted by Congress, requires states to accommodate prisoners’ religious beliefs unless the prison officials can show that there is compelling reason not to accommodate the request.

The Sixth Circuit invalidated the statute as a violation of the United States Constitution’s Establishment Clause. The prison inmates sought Supreme Court review.

“This case is an important case because it should clarify the power of state and federal government to lift governmental burdens from religious exercise of all prisoners without violating the establishment clause,” Goldberger says. “The case may also define the degree to which Congress may condition its appropriations to state governments based on their willingness to comply with the congressional funding requirement.”

“This case is about prison safety,” says Cole. “We believe that prison wardens are in the best position to make decisions about the security implications of various kinds of prisoner requests, and that the federal government should not be foisting a ‘one-size-fits-all’ solution on the states.”

Professor Goldberger and his students have worked on this case for years and will continue to prepare together for the arguments in front of the Supreme Court. “I feel very lucky to be involved in something so important to the school and to the law in general,” says Anne Juterbock, a third-year law student at Moritz Law from Ashtabula County who is a research assistant for Goldberger and a participant in the Civil Law Practicum. “I never thought I would set foot in a courtroom and now I am considering litigation as a career.”

Goldberger’s students in the Civil Law Practicum have worked on many other important cases over the past few years, including McIntyre v. Ohio Elections Commission, which reached the U.S. Supreme Court in 1994.
The Moritz College of Law Clinical Program is comprised of six different clinics and practica. In the academic year 2004–2005, over 150 students have enrolled in Moritz Law clinics.

### Civil Law Practicum
Professor David A. Goldberger, Isadore and Ida Topper Professor of Law and Director of the Clinical Program
Professor Gregory M. Travailio, Lawrence D. Stanley Professor of Law
Staff Attorney Elizabeth Cooke

### Prosecution Practicum
Assistant Professor Ric Simmons
Staff Attorney Robert Krivoshey

### Criminal Defense Practicum
Professor Barbara Rook Snyder
Staff Attorney Robert Krivoshey

### Justice for Children Practicum
Professor Katherine Hunt Federle, Director of Justice for Children Practicum
Staff Attorney Angela Lloyd

### Mediation Clinic
Professor Sarah Cole
Professor Joseph P. Stulberg, Associate Dean for Professional Relations
Staff Attorney Amy Cohen

### Legislation Clinic
Associate Professor Steven Huefner
Professor James J. Brudney, Newton D. Baker-Baker & Hostetler Chair in Law
Staff Attorney Terri L. Enns

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### State of the Art Courtroom Open at Moritz Law

The beginning of classes in the fall of 2004 coincided with the opening of the completely renovated, state-of-the-art courtroom at Moritz Law. At a cost of over $400,000, almost all from privately donated funds, the college’s courtroom has been renovated for the first time since its construction in the mid 1950s. With the help of a committee of alumni, headed by Frank Ray and John McDonald, both Moritz Law graduates and distinguished trial lawyers, the courtroom project was completed after two years of planning and work. The alumni committee not only raised the funds for construction, but helped to plan and design the courtroom as well.

In addition to receiving a complete interior facelift, including the refinishing of the walnut interior, the courtroom is equipped with the most modern evidence presentation and teaching technology. Multiple digital video cameras and a complete sound system enable clinical and trial practice instructors to record exercises and practice sessions by their students.

Modern evidence presentation technology allows attorneys to do such things as electronically display documents, make PowerPoint presentations, use accident reconstruction software, and even use the Internet in their in-court presentations. The judge has touchscreen control of the entire system and can allow, for example, the attorneys and witness to view evidence on their flat panel screens prior to its introduction to the jury.

“The courtroom will be a significant asset in training law students to function as effective advocates in the 21st century,” says Professor Greg Travailio, who will assume the position of Director of the Clinical Program in January 2005. “While the qualities of an effective trial lawyer—discipline, preparation, confidence, creativity, and a firm grasp of the rules of evidence—don’t change, our law students have got to be prepared to use technology that will allow them to better utilize these qualities and to appeal to generations that are more visually oriented. We now have that technology at Moritz Law.”

The courtroom will be formally dedicated the Frank C. Woodside Courtroom sometime in the spring in honor of alumnus Frank C. Woodside, who graduated from the college in 1969. Dr. Woodside (he also holds an M.D. degree) is a partner with the law firm of Dinsmore and Shohl in Cincinnati and contributed $200,000 to the fund-raising effort.
Justice for Children Practicum Alumna Credits Clinic with Starting Her on the Path to a Skadden Fellowship

“Contemporary society is served well by lawyers who use their talents and privileges to fight against the crippling effects of poverty and oppression,” writes Sarah Biehl, a 2003 graduate of the Moritz College of Law and alumna of the Moritz Law Justice for Children Practicum. Sarah has herself now embarked on that fight as the recipient of a 2004 Skadden Fellowship, awarded by the New York-based law firm of Skadden, Arps, Slate, Meagher & Flom. Sarah is the first Moritz Law graduate to receive the prestigious award.

Sarah plans to use her fellowship to start a legal clinic for high school students in an impoverished West Side Chicago neighborhood. In September 2004, Sarah began work with the Legal Assistance Foundation of Metropolitan Chicago (LAFMC) to design and implement a program that will educate and provide legal assistance to students in such areas as domestic and dating violence, immigration law, special education, family law, consumer issues and school discipline. The specific goals of the LAFMC clinic within the school are to create a comprehensive referral system for students that will link them with appropriate service providers and community groups; to design and teach legal education programs with the school curriculum; to provide individual representation to students; and to engage in systemic advocacy within the school.

“I envision the project as a vehicle for educating and empowering high school students to use the law to make substantive changes in their lives,” Sarah says. “Kids usually experience the legal system passively, and very few legal services organizations have the time and personnel to focus specifically on addressing the civil legal needs of children. My idea is that if a lawyer is available to help adolescents in this tough neighborhood address the crises in their lives, many of the kids will have a better shot at succeeding in school and in society.”

Sarah says she first developed the idea for her project during her third year at Moritz Law while taking the practicum. “The Justice for Children Practicum is the reason I decided to develop a project based on representing children. The skills (and confidence) I gained were absolutely crucial to my decision to pursue a fellowship and to focus my fellowship project on representing children. Moreover, the approach of the clinic—to focus on representing children’s interests and providing them with a voice in the legal system—was the primary philosophical motivation for my project.”

Katherine Hunt Federle, professor of law and director of the practicum, worked closely with Sarah and is not surprised by her success. “Sarah has a deep commitment to children’s legal issues and a passion for justice,” reports Professor Federle. “I know she will make a difference in the lives of these children.”

Working with LAFMC, Sarah determined that many children who are struggling to succeed in some Chicago neighborhoods have legal needs that go unaddressed, both because legal services are not accessible to them and because very few legal services providers have the resources to focus on the legal issues and needs of children. Now, thanks to the Skadden Fellowship funds, Sarah has the opportunity to implement a unique plan for delivering crucial legal services to a population—high school students—who would not otherwise have access to such information and counsel.

Legislation Clinic

Now in its fifth year, the Moritz Law Legislation Clinic continues to provide second- and third-year law students an unparalleled opportunity to participate in the lawmaking process while contributing to Ohio’s state government. Each semester, the clinic enrolls approximately 12 students who spend substantial time working in the offices of a state legislator or other government office and attend twice weekly class discussions. More than 90 students have now participated in the Legislation Clinic.

To date, typical clinic placements have included the four party caucus leadership offices in the Ohio General Assembly, as well as offices of a number of individual legislators, the Legislative Service Commission, the Joint Committee on Agency Rule Review, the Office of the Governor, and several other executive agencies. In these placements, clinic students have contributed legal research and analysis on scores of significant issues facing Ohio, including questions of public school funding, tort liability, election law reform, health care coverage, and a variety of criminal justice matters, to name a few.

This semester, clinic students have had the opportunity to witness the legislature during its biennial election cycle. The lighter pace of work at the Statehouse in the weeks before the election gives students the chance to conduct more in-depth research about issues likely to unfold rapidly in the lame-duck session after the November election. Meanwhile, the political season provides the students an indirect but interesting exposure to the rigors of political campaigning and fund raising.

Frequent clinic guests are another valuable part of the students’ experiences. As one of the highlights of this semester, in late October, clinic students were guests of State Street Consultants for an afternoon discussion of the role of interest groups and
legislative lobbying. Neil Clark and Paul Tipps, the two principals of State Street Consultants, described the work of their firm and responded to students’ questions, in addition to showing students the firm’s office.

Several other interest group representatives have visited with the clinic students, as have directors of several agencies of state government. In addition, in a clinic first, this semester a panel of four former clinic students, all now working in Ohio government, returned to the clinic to discuss their careers and how they are now building on their clinical experience to use their Moritz Law degrees to serve the State of Ohio. The clinic also is again looking forward to visits with a few state legislators toward the end of the semester.

In its first four years, the Legislation Clinic in role as state legislators confer during a break in the testimony. As part of their final project, clinic students were assigned roles as witnesses or legislators and conducted a mock legislative hearing in the Ohio Statehouse.

In its first four years, the Legislation Clinic also has sponsored two conferences on issues of concern to state legislatures. The clinic’s first conference, held in February 2002, addressed the topic of “Early Returns on Legislative Term Limits.” Last April, the clinic’s second conference addressed the topic of “Medicaid, Medicines, and Malpractice: Issues in State Health Care Policy.” Over 80 participants from a number of disciplines, including law, medicine, public health, and social work, took part in the 2004 conference. Dr. John C. Nelson, M.D., then president-elect of the American Medical Association, provided a lively keynote address in the atrium of the Ohio Statehouse.

**Prosecution Practicum**

On May 20, 2004, a black Dodge Dakota truck was driving through an intersection in Delaware County, Ohio, at approximately 50 miles per hour when it was struck in the side by a white Chevy cargo van. The black truck flipped onto its roof and skidded over 30 feet. The driver of the truck was partially ejected from the vehicle and died a few minutes later as a result of the injuries.

After a brief police investigation, the driver of the cargo van was charged with negligent homicide and vehicular manslaughter, under the theory that the driver operated his vehicle in a negligent fashion and ran the stop sign at the intersection, thereby causing the death of the victim. Two students in the Moritz Law Prosecution Practicum were assigned the case and spent many days investigating it. The three questions they had to answer were the same three questions that every prosecutor should answer in evaluating a case: Is the defendant guilty of the crime charged? Could they prove the defendant’s guilt to a jury beyond a reasonable doubt? If the answers to the first two questions are yes, what sentence (if any) does the defendant deserve for committing the crime? This last question is the essence of prosecutorial discretion and is a question that students in the practicum must struggle with in every case—although the penal code sets out the maximum sentence that each crime is “worth,” the role of the prosecutor is to exercise independent judgment in evaluating the facts and circumstances in each case. And every case presents a new challenge in this context: from the

In the case of negligent homicide, the students had an especially difficult task: the injury done by the defendant was obviously of the greatest magnitude, but the mens rea of the crime was, at best, negligence—and is there any driver in the country that has not once accidentally run a stop sign? Was the defendant essentially being prosecuted for bad luck? And yet the legislature has clearly defined this conduct as a crime, punishable by up to six months in jail. Shouldn’t we need to see some special circumstances before we offer the defendant a lesser charge?

Sometimes the defendant’s guilt is obvious and the appropriate punishment is clear, but proving the case to a jury is problematic. In early October of 2004, six defendants allegedly conspired to make some money by writing checks on closed accounts to Wal-Mart; they would then take the merchandise they had “bought” and return it at a different Wal-Mart for cash. The police stopped all six defendants driving in two separate cars and recovered various receipts and appliances, as well as confessions from two of the six. In the first trial of the semester, two practicum students were forced to prove which of the defendants wrote the checks (and which of the others had knowledge that the property was stolen) by using the receipts and confessions, as well as various surveillance tapes from Wal-Mart and the testimony from three different bank representatives as to the invalidity of the checks. As with every trial, the other students in the clinic observed and critiqued the opening and closing statements of the students who were preparing to go to trial, offering
suggestions and feedback as part of the practice.

Each of the 18 students in the Prosecution Practicum works directly with clinic professor Robert Krivoshey, who has been appointed a special prosecutor for the City of Delaware. The students are assigned all manner of misdemeanor cases, from petty thefts and driving while intoxicated to mental health-related proceedings. During the course of the semester, Professor Krivoshey and some of the students are in court in Delaware almost every day. You can watch the proceedings live on the Internet at http://www.municipalcourt.org/medialit.html.

Justice for Children Practicum

Founded in 1998, as a joint venture of the Moritz College of Law and the Center for Law, Policy, and Social Science, the Justice for Children Practicum, with its concomitant clinic, is committed to both individual representation and to law reform. To further these complimentary goals, the practicum initiated its own Amicus Project in May of 2000. Through the Amicus Project, the Justice for Children Practicum files amicus briefs in appellate cases in which a child or children’s legal interests are insufficiently represented. Thus, the project strives to enact law reform by ensuring that children’s voices are heard in cases that implicate their interests.

The practicum has most recently filed amicus briefs in the Ohio Supreme Court and a Washington State Court of Appeals. In addition, it has filed two motions in support of jurisdiction in the Ohio Supreme Court. All of the filings undertaken by the practicum involve cases litigated by adults to establish the primary caregiver and custodian of the children in issue, and, yet, in none of these cases were the children themselves represented.

The Ohio case of In Re Williams involved two boys, ages three and seven, whose biological mother’s parental rights had been terminated by the lower courts. Despite the boys’ repeated requests to be reunified with their mother, and the older boy’s clear articulation that his desire for reunification expressly contradicted the recommendation of his court-appointed guardian ad litem, the trial court refused to appoint counsel for either the older or younger brother. The practicum, in collaboration with the Ohio Association of Criminal Defense Lawyers, jointly filed an amicus brief advancing the boys’ right to counsel, supported both constitutionally and statutorily, in a termination of parental rights proceeding.

The Ohio Supreme Court held that pursuant to the Ohio Revised Code, as clarified by the juvenile rules of procedure, “a child who is the subject of a juvenile court proceeding to terminate parental rights is a party to that proceeding and, therefore, is entitled to independent counsel in certain circumstances.” Moreover, the court noted that the child, as a party, has due process rights worthy of protection. Consequently, issues like those pertaining to the costs of additional counsel and to the possible need for multiple attorneys are merely “peripheral practical considerations [which] fade in importance.”

The reverberations of the Williams’s holding continue to shake the landscape of the Ohio juvenile courts. Franklin County, for example, recently modified its local court rules to clarify that the child subjects of abuse, neglect, and dependency proceedings are to be given counsel, not just a guardian ad litem.

In the State of Washington, the practicum filed an amicus brief in support of the appointment of counsel for a nine-year-old child subject of a custody battle between two same sex partners. In In Re Parentage of LB, LB’s biological mother, Page Britain, served as the family’s primary wage earner. Mian Carvin, Page’s same-sex partner, stayed home to raise LB and fill the role of primary caregiver. When the couple separated when LB was six years old, Ms. Britain denied visitation to Ms. Carvin. The trial court was given no information as to LB’s wishes. LB had neither a guardian ad litem nor an attorney. Thus, the project argued in its brief that LB has a right to be heard in the proceeding in order to protect her constitutional rights.

In May, the Washington Court of Appeals ruled that a child has a constitutional right to maintain a relationship with her parent, citing amicus briefs filed by the Justice for Children Practicum and others. Moreover, the court ruled that LB is a necessary party to the common-law parenthood action and directed the trial court to appoint a guardian ad litem for the child. A petition for review is pending with the Washington Supreme Court.

Mediation Clinic

After a weekend packed full of training in the skills and techniques of court-annexed facilitated dispute resolution, complemented by a few weeks of class discussion exploring the policy and theory underlying community mediation, our students set out to the Franklin County Municipal Court to assist Franklin County residents in resolving the range of everyday conflicts that have brought them to court. The court offers two types of mediation services. The first, called a “pre-filing” mediation, allows parties to request the assistance of a court mediator prior to filing a formal complaint. Parties to pre-filing mediation are generally amenable to the idea of settlement—they have not paid a filing fee or drafted a complaint,
and in many cases they have not fully prepared the “legal arguments” or evidence that they will bring before a magistrate judge—and their willingness to attend a voluntary mediation session often indicates a willingness to engage in conversation and settlement negotiations. Indeed, Franklin County Court mediation specialist Amy Moore estimates that pre-filing settlements rates are approximately 75%.

Pre-filing cases range in depth and scope and have included joint business ventures gone awry, requests for unpaid wages by immigrant laborers, consumer disputes, claims arising out of car accidents, debt collection actions, and requests for the return of security deposits or rent paid into escrow pending apartment repairs. Parties have brought pre-filing claims for as little as 60 dollars and as much as three thousand dollars—the jurisdictional limit of the court.

The second type of mediation occurs after parties have filed and served a complaint and have paid a 47 dollar filing fee. Parties appear in court having received a notice that their case is set for trial—some parties are represented by counsel, most are pro se, but almost all arrive eager and ready to persuade a magistrate judge of the correctness of their claims and counterclaims. Rather than adjudicate the dispute, the magistrate will instead recommend that both sides dialogue in a good faith attempt to work out a mutually agreeable settlement with the assistance of a third-party mediator.

“I’m not going to say pretty please,” one magistrate told a party hesitant to mediate. The case settled.

“Post-filing” mediation cases are similarly diverse—some are emotionally charged and involve a history of close interpersonal relationships such as divorced parents disputing over who should pay medical and dental bills for their minor child, a mother suing a daughter over damages to a car, or ex-couples attempting to settle on unpaid bills, broken promises, and, in one case, a custody arrangement for a very beloved pet. Other cases are factually complex and technical; for example, one involved the interpretation of an employment termination package with conflicting provisions, and another implicated years of supply and service contracts in the golfing industry. In all cases, however, student mediators encourage parties to broaden their approach to the dispute from conflicting factual and legal accounts to include some acknowledgement of the other side’s perspectives and a willingness to explore future-looking options that will meet each side’s interests, needs, and sense of equity, and, hopefully, forge some common ground.

Not all cases settle. However, in each mediation session, students help the parties explore the pros and cons of proceeding to court and articulate for themselves a shared vision of a good resolution to their dispute.

**Updates from the Clinics (cont.)**

**Professor Travalio Joins the AALS Committee on Clinical Legal Education**

Professor Greg Travalio, who teaches in the Civil Law Practicum and will become the Director of the Moritz Law Clinical Program in January 2005, has been invited to join the AALS Committee on Clinical Legal Education. Professor Travalio will serve on the committee from January 2005 until January 2007.

**Moritz Law Clinic Supervising Attorneys Receive New Title and Faculty Status**

Every clinic and practicum at Moritz Law is co-taught by a tenure-track faculty member, who has primary responsibility for the classroom work, and a supervising attorney, who oversees the students’ actual legal work. After over a decade of working through various university committees, Moritz Law finally received approval to change the title and status of the supervising attorneys from non-faculty “staff attorneys” to clinical professors, who are members of the faculty. The new title and status more accurately reflect the job of the clinical professors who play a large role in educating the clinic students, both in and out of the classroom. The transition to the new title and status will take place during the 2004–2005 academic year.

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**Clinic News**

**Moritz Law Mediation Clinic Hires a New Professor**

In the fall semester 2004, the Mediation Clinic welcomed Amy Cohen as the newest member of the Moritz Law clinical team. Professor Cohen graduated magna cum laude from Harvard Law School in 2002 and worked for a year in Nepal on a Fulbright scholarship advising the Nepali government in designing training programs for community mediation. She returned to the United States to clerk for Judge Carlos F. Lucero of the Tenth Circuit before signing on as a professor for the Mediation Clinic.

**Professor Amy Cohen**

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More than 25 years ago, Professor David Goldberger asked the Supreme Court of the United States representing to take action that would ultimately compel the Village of Skokie to permit a group of Nazis to hold a public assembly in front of the village hall. Skokie, a town that contained a substantial number of Jewish residents, had adamantly refused to allow that public assembly. Goldberger faced a lot of criticism for accepting the case, particularly since he is Jewish.

“There were some segments of the Jewish community who were really angry,” he says. “One holocaust survivor wrote in her book that I should have been drawn and quartered for what I did.”

Goldberger spoke at many synagogues to explain why he took the case. He was working full-time for the American Civil Liberties Union at the time and had taken the case when no one else would. “It was the right thing to do,” he explains. “It raised an important First Amendment right.”

Goldberger, and others who helped him, was successful in National Socialist Party v. Skokie, a case that has been studied by students everywhere as an example of First Amendment freedom of expression. Students at Moritz Law have been able to learn directly from Goldberger since 1980, when he joined the law school’s faculty.

In 1987, Goldberger took over the position of Director of the Clinical Program in addition to his full-time teaching. He will step down as director at the end of this year, hoping to spend more time teaching, researching, writing, and litigating clinic cases.

“Over time, any administrator needs to pass the reins to someone like incoming director Greg Travalo with fresh ideas and perspectives,” he says. “It will be good for the program.”

Since he has been director of the program, students have worked on two cases that have reached the U.S. Supreme Court, McIntyre v. Ohio Elections Commission and Capitol Square Review and Advisory Board v. Pinette.

Goldberger recently learned that the Supreme Court granted certiorari on another clinic case, Cutter v. Wilkinson. The case addresses the constitutionality of a federal statute protecting prison inmates’ religious exercise. Clinic students are playing an active role in preparation of the brief and appendix.

“This case is an important case because it should clarify the power of state and federal government to accommodate the religious exercise of prisoners without violating the Establishment Clause,” Goldberger says. “The case may also define the degree to which Congress may condition its appropriations to state government based on state agreement to comply with the congressional funding policies.”

Goldberger received both his undergraduate and law school educations from the University of Chicago. Prior to teaching at Ohio State, he worked for legal services for two years and for the American Civil Liberties Union for 11 years, serving as the legal director. His most visible cases for the ACLU involved freedom of speech issues.

While he worked for the ACLU, he began to teach courses as an adjunct at Chicago-Kent College of Law. He came to Ohio State to teach courses in the clinic, and in constitutional law and the First Amendment.

Teaching was a chance for Goldberger to combine his love of litigation with the opportunity to teach future lawyers. “The clinic is a particularly exciting place to teach and it’s exciting to work with students doing their first cases,” he says. “Students sometimes gain self-confidence from being able to see that being an effective lawyer—above anything else—takes good judgment and self-discipline, qualities not easily acquired in the traditional classroom setting.”

Professor Goldberger is married with two children and two step children, who are all grown. He lives in Worthington with his wife, Abbie Harding, a retired high school science teacher.
Clinic News

Moritz Law

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Legislation Clinic student Jessica Grossenbacher speaks to a panel composed of other clinic students in a mock legislative hearing as part of the students’ final project. For news on the Legislation Clinic, see page 3.

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