

The Justice for Children Project Sponsors *The Mind of a Child: The Relationship Between Brain Development, Cognitive Functioning, and Accountability Under the Law*

On March 10 and 11, the Justice for Children Project at The Ohio State University Moritz College of Law, in conjunction with the *Ohio State Criminal Law Journal* and the Center for Law, Policy, and Social Science, sponsored a groundbreaking conference on the science of brain development and functioning and the implications of that research for the legal concepts of *mens rea* and juvenile accountability and culpability. Students from the Justice for Children Practicum were not only required to attend portions of the symposium, but were able to meet and debate with speakers outside of the scheduled presentations. The timing of the interdisciplinary symposium was extraordinary, because on March 1, 2005, the U.S. Supreme Court issued its decision in *Roper v. Simmons*. The Court held that imposition of the death penalty for those accused of committing a

capital offense before their 18th birthday violated the U.S. Constitution.

The Mind of a Child symposium was an incredible opportunity for professionals from around the country working on the science of brain development and the culpability of adolescents to come together to debate publicly and personally, for the first time, the implications of new medical research that confirms, as *amici curiae* in *Roper* so aptly put it, “[t]he adolescent’s mind works differently from ours.”

Throughout the symposium,
the debate was heated.

Throughout the symposium, the debate was heated. Neuroscientists such as Dr. James Fallon,



Professor Douglas Berman of Moritz Law moderates a panel at the conference with Professor Stephen Morse, Ferdinand Wakeman Hubbell Professor of Law and professor of psychology and law in psychiatry at the University of Pennsylvania; Abigail Baird, assistant professor in the Department of Psychological and Brain Sciences at Dartmouth; and Aliya Harder, Esq., associate, Heller, Ehrman, White, and McAuliffe.

Cover Story

professor of anatomy and neurobiology at the University of California at Irvine, and Dr. Abigail Baird, assistant professor in the Department of Psychological and Brain Sciences at Dartmouth, argued that new medical research demonstrates definitively that the adolescent brain continues to develop through the early 20s and that the frontal lobe, which controls thinking and problem-solving, is the last portion of the brain to develop fully. Scholars such as Deborah Denno, professor of law at Fordham University, asserted that the criminal law's traditional dual dichotomy of conscious versus unconscious thought is inadequate and does not sufficiently account for the complex medical reality that may be the mental state of an adolescent offender. Finally, scholars such as Professor Stephen Morse, Ferdinand Wakeman Hubbell Professor of Law and professor of psychology and law in psychiatry at the University of Pennsylvania, argued that the medical research cannot ever explain why people who act volitionally choose to commit acts considered violative of societal norms and mores. Professor Morse challenged many of the other presenters with his theory



Professor Katherine Hunt Federle, director of the Justice for Children Practicum and the Justice for Children Project, speaks at the conference that the project co-sponsored on March 10 and 11.

that human action cannot be reduced to mechanistic causes such as chemical and physical brain development because it is the fact that human action is governed by desires and beliefs that distinguishes it.

The symposium concluded with a panel addressing the impact of this new “hard” science on the U.S. Supreme Court

in *Roper* and on the implications of the *Roper* decision for other areas of juvenile accountability. The scientific and philosophical debate engendered at the symposium has continued through an array of regular e-mail exchanges between presenters in anticipation of the publication of the symposium in the spring 2006 volume of the *Ohio State Criminal Law Journal*.

Moritz College of Law Clinical Program Faculty

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. Goldberg, Isadore and Ida Topper Professor of Law

Professor Gregory M. Travalio, Lawrence D. Stanley Professor of Law and Director of Clinical Programs

Staff Attorney Elizabeth Cooke

Prosecution Practicum

Assistant Professor Ric Simmons

Staff Attorney Robert Krivoshey

Criminal Defense Practicum

Professor Barbara Rook Snyder, Joanne Wharton Murphy/Classes of 1969 and 1973 Professor of Law and Executive Vice President and Provost of the University

Staff Attorney Robert Krivoshey

Justice for Children Practicum

Professor Katherine Hunt Federle, Director of the Justice for Children Project

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

Alumni Corner

Mediation Clinic Alumnus Uses Skills from Clinical Program as a Professional Mediator in Los Angeles

These days, Ricky Windom '01 finds himself at the center of all kinds of disputes—and the Southern California native says he couldn't be happier. Windom is a mediator with the Los Angeles Superior Court where he helps people solve their civil disputes without resorting to full-blown litigation. Windom feels that the job allows him to provide a valuable service to his community with skills he acquired as a student at the Moritz College of Law.

"As a mediator, I definitely feel like I'm making a difference," Windom explains. "In nearly every mediation, I see people who can't afford to pursue the full litigation process. Mediation provides people with a fair and affordable method of resolving their disputes."

Windom mediates as many as 20 cases per month for the L.A. Superior Court. While he prefers to help parties resolve their contractual disputes, he has been involved with a broad range of cases that run the gamut from standard civil disputes to employment discrimination claims. Windom says a diverse caseload provides him an opportunity to meet and work with people from many different backgrounds and allows him to gain experience in resolving a wide array of legal issues. "I think it is good to do a little bit of everything," he notes.

Windom says his duties as a mediator include making sure that the parties' contentions, discussions, and negotiations are accurately documented.

He says he also finds it important to demonstrate a thorough understanding of the issues at stake and to keep eye contact with the participants at all times. These are the types of skills Windom learned at Ohio State, where he was a student in the Mediation Clinic. He went on to earn a certificate in Alternative Dispute Resolution, which is awarded to a student who earns 15 hours in specified courses and completes an externship in an ADR-related field. The program has been in existence since 1998.

"I knew entering law school that I wanted to take [ADR] classes—it was something out of the normal, mundane law school curriculum," Windom says. Once he began working in the Mediation Clinic, however, he notes that, "I realized it was something I could do right then and there to help people."

Windom says that the hands-on nature of the clinical work prepared him well for his professional life as a mediator: "It was great to get practical experience before I made the jump out on my own. The training I received at Moritz Law, including real-world mediation and other ADR experience, gives me a jump on a lot of people, even experienced attorneys" new to the ADR field.

Although Windom has found a great deal of success in mediating cases for the court, he often is faced with parties who have been ordered to pursue mediation against their will. The mediation process is not binding and the parties are not required to reach

"The training I received at Moritz Law, including real-world mediation and other ADR experience, gives me a jump on a lot of people, even experienced attorneys" new to the ADR field.

an agreement. As a result, he says, "Sometimes it is like forcing people to do something they don't want to do." In order to counteract this reality, Windom says he prefers to allow both sides of the dispute to share their grievances during the early stages of mediation: "I just let them discuss the issues and air things out." This initial open disclosure often (though not always) leads the two sides to begin discussing their differences in a productive manner.

In addition to his duties with the court, Windom is serving a three-year appointment to the Landlord Tenant Mediation Board in his hometown of Culver City, on Los Angeles' west side. As a board member, Windom mediates issues important to his community, including disputes involving rent-control housing and landlord repair agreements. It turns out that the skills he developed in the Clinical Program serve him well in this context too: "With the landlord and tenant board, I have not been to a mediation where I have not been able to get an agreement."

Faculty Biography

Profile: Staff Attorney Robert Krivoshey

As any of his current or former students can tell you, spending time in Bob Krivoshey's office is always an educational experience. In addition to a seemingly endless supply of anecdotes from his years as a practitioner and a clinical professor, Krivoshey displays a vast breadth of knowledge and experience—a breadth that is perhaps the inevitable result of combining a doctoral degree in history with 10 years of practice in the criminal courts. On a rare moment when a student was not in his office, he sat down for an interview with *Clinic News*:

Q: You've been teaching in the Moritz Law Clinical Program for 17 years. How many different courses have you taught?

BK: I've taught the Juvenile Clinic, the Criminal Defense Practicum, the Prosecution Practicum, Trial Advocacy, Jury Selection, Trial Practice and Social Sciences, and Comparative Trial Advocacy.

Q: And now you're teaching Evidence—the first time you've taught a “non-clinical” class. What's that like?

BK: I find it much more challenging. I'm used to teaching students that really want to be in the class—that makes teaching in the clinics very rewarding, but it also means you can count on the students being engaged and enthusiastic. In a larger class, you have to generate the enthusiasm for them.

Q: You graduated from Yeshiva University in New York City, and then you went to the University of Chicago for a master's and ultimately a Ph.D. in history. What did you do after you graduated?

BK: I taught history at the Chicago City Colleges for a few years.



A common sight: Professor Krivoshey discusses issues with a student in his office.

I think my role is not just as a teacher but as a mentor; I think students have to see me as a role model and I have to know them as a complete person.

—Robert Krivoshey

Q: And then you came to Ohio State. Why did you decide to go to law school?

BK: My wife had just gotten her Ph.D. and she got a job here.

Q: But why law school?

BK: Why not law school?

Unemployed historians go to law school.

Q: And what did you like most about it?

BK: I can say that I learned more about the nature of American society in my first year of law school than in all my years in graduate school studying history.

Q: Can you give me an example?

BK: Law school makes you realize how slowly American society changes. Specifically, studying property and contracts reveals the fundamentally conservative nature of American society.

Q: So after graduation, you became a practicing criminal defense attorney.

BK: For 10 years, 24/7.

Q: Why did you go into criminal law?

BK: It struck me as the most exciting field—all that human drama.

I did every case, from the lowest disorderly conduct to the most serious felonies.

Q: And then you ended up teaching here. How did that happen?

BK: I knew [Professor] David Goldberger from the University of Chicago. He and I met in the fall of 1964 when I was a graduate student and he was in law school. When he came to Columbus we would have him over for dinner once in a while. Since I had experience in the criminal courts, he would call me up when he was considering someone to be a supervising attorney and say, “How about this person?” Finally, I said to David: “What about me?” and he said: “I didn't know

you were interested.” So I got hired. Of course, the hiring process was a little simpler back then. David, [Professor] Leroy Pernell, and I went to Katzinger's Deli for lunch and after checking me out with the court, I had the job. That was 17 years ago.

Q: And so you must like this job...

BK: I love teaching.

Q: Why?

BK: I think it's the only real talent I have—the ability to make complex things simple so others can understand them. And I tell my students that they need to develop this ability as well. I have always thought that in order to be a great prosecutor or defense attorney, you have to be a great teacher.

Q: You are also known as a teacher who will spend hours with any student who stops by your office—talking not just about their cases or academic work but also about their own background, their life outside of law school. Why do you do this?

BK: I think my role is not just as a teacher but as a mentor; I think students have to see me as a role model

Clinic History

and I have to know them as a complete person.

Q: And what is it like teaching in the Clinical Program?

BK: I think that when many students reach the third year, many of them still don't know what they want; they're confused. The clinic experience can rejuvenate them and revive their interest in the practice of law. I see my job as rekindling their interest in law that they had when they came here.

Q: You've been teaching in the clinic for almost as long as anyone around here. How have things changed?

BK: They've changed in a number of ways. We now have the Internet, so my co-teacher in the Prosecution Practicum can watch the students in court. And there's more specialization in the clinics—when I started we would always take two or three juvenile cases just to give students that experience. Now we focus only on criminal cases.

Q: That's because there are so many more clinics now?

BK: That's right. When I started there was just one year of a criminal law clinic and one year of a civil law clinic. We were in a basement office—you'd look outside my window and see a wall. We shared the space with other faculty, including Barbara Snyder [now university provost] and Nancy Rogers, who taught in the clinic [now the dean of the law school]. When we moved up here to this suite we thought we had all the room we would need—but now it's not big enough. We can't fit most of the clinical faculty in here. We now have at least five clinical courses each semester; that's over 150 students every year.

It's a very positive development.

Bob Krivoshey currently teaches the Prosecution Practicum, the Criminal Defense Practicum, Evidence, and Trial Practice.



A Short History of the Clinical Program at the Moritz College of Law Part I: 1935–1979

Editor's Note: As the reader will observe, Part I of the history of the Clinical Program at Moritz Law is incomplete. This is the first attempt to compile the history of the program and there are significant gaps (and perhaps even some inaccuracies) in the story. We are hopeful that alumni of the Clinical Program will help us fill in the history with additional facts, anecdotes, stories, etc., about the clinics at Ohio State. If you are an alumnus of any clinical course at Ohio State prior to 1980, please take a moment and give us any recollections that you have of the courses, professors, cases, and other aspects of your clinical experience. You can send them to: Director of Clinical Program, Moritz College of Law, 55 W. 12th Ave., Columbus, OH 43210; or e-mail them to travalio.1@osu.edu. We would love to hear from you!

In sum, the college's first comprehensive look at its Clinical Program resulted in a ringing endorsement of its structure, function, and goals.

April 2004 marked the 70th anniversary of the establishment of clinical education at the College of Law of The Ohio State University, now the Moritz College of Law. When the law school established its Legal Clinic in April 1934, it became only the fifth law school in the country to incorporate a clinical program into its regular curriculum. The Clinical Program was established with the assistance of the Student Bar Association, the Columbus Family Bureau, and the Columbus Barristers' Club. Members of the Barristers' Club supervised the work of the students.

In March 1935, Professor Silas A. Harris became the first director of the clinic, and he focused on the outreach of the program. Cases were referred to the

clinic from local attorneys, judges, and social service agencies. The Columbus Bar Association and the Columbus Legal Aid Committee assisted with matters that went to litigation. The clinic proved to be such a valuable addition to the curriculum that in 1937 participation in the Legal Clinic was required for graduation from the College of Law.

By 1941 the Legal Clinic had become firmly established in the curriculum and the Columbus legal community. The *Ohio State University Bulletin* for the year 1941 described the Legal Clinic as: “[Providing] practical experience in handling actual cases for legal aid clients under the supervision of the Director of the clinic; preparing reports on each case; cooperating with public defenders, organized charities, the Family and Children's Bureau and members of the bar; drafting legal papers; negotiating with parties and assisting in the trial of cases.”

In addition, the Legal Clinic at Ohio State did its part in the war effort from 1940 until 1945. In cooperation with the Red Cross, students assisted the servicemen and -women, and their

Clinic History (cont.)

families, who were fighting in World War II.

In 1954 the Legal Aid and Defender Society of Columbus was established and the clinic began sending law students to its downtown office to assist the attorneys working for the society. The clinic continued to handle cases involving university students and university employees from its office at the College of Law. We believe that during this period the clinic was supervised by Ms. Margaret Daeler under the overall direction of Professor Bob Wills.

In 1964, the focus of the clinic changed slightly after Professor Gerald Messerman became the new director. During his tenure, the clinic moved from an emphasis on domestic relations cases to taking primarily criminal appeals and *habeas corpus* matters. In 1968, Professor Bruce Jacob became the clinic director, hiring the present dean of the college, Nancy Rogers, as a clinic attorney. Later in his career he became the dean of Stetson Law School.

During these first 40 years, the clinical experience was quite different from what students experience today. The clinic was much more like an externship, teaching practical skills and providing practice experience without a serious academic component. And instead of the specialized clinics we currently offer, a student participating in the “clinic” might work on any sort of case: civil or criminal, domestic or appellate. Finally, the Supreme Court had not adopted a student practice rule, so students were not permitted to directly represent clients in court.

The first step towards modernizing the clinic came in the early 70s, when clinical “courses” were introduced into

TIMELINE OF CLINICAL PROGRAM

1934 – The Ohio State University College of Law becomes the fifth law school in the country to incorporate a clinical education into its curriculum. Students handle cases involving university students, as well as referrals from local attorneys, judges, and social service agencies.

1964 – Professor Gerald Messerman becomes clinic director. The focus of the clinic shifts from domestic relations to criminal appeals and *habeas corpus* matters.

1930

1940

1950

1960

1970

1954 – Legal Aid and Defender Society of Columbus is founded; clinic students begin working in its office.

1974 – Academic courses are added to the clinical program: Civil Law Practicum, Criminal Law Practicum, and Juvenile Law Practicum.

the curriculum for the first time, and the College of Law began offering the Civil Law Practicum, the Criminal Law Practicum, and the Juvenile Law Practicum. These clinical courses were developed under Professor Jacob’s stewardship in response to a 1974 report that suggested that the clinics should have a more academic focus. In developing the academic aspect of the clinic, the college chose to adopt a unique approach to clinical education: each clinic was co-taught by a tenure-track member of the law faculty, who was primarily (but not exclusively) responsible for a classroom component of the clinical experience, and an experienced staff attorney who was primarily (but not exclusively) responsible for supervising students in their handling of live-client caseloads. The classroom component functioned both as a forum for students to discuss the legal, tactical, strategic, and ethical components of their cases, and as a laboratory for students to learn skills through simulations and

exercises. The students, through their collaboration with the staff attorney on client representation, also had the opportunity for one-on-one instruction by an experienced lawyer. The Moritz Law Clinical Program has retained this innovative co-teaching structure up to the present day.

In the mid-1970s, Professor Chuck Thompson became the director of the Clinical Program at the college. Chuck was well known as a real “character” in the law school: except for court appearances, Chuck could always be found in blue jeans and motorcycle boots. He was an up-front sort of guy who rarely minced words, but who also cared deeply about teaching his students and training them to be effective and ethical lawyers. Tragically, Chuck passed away of a heart attack in the early 1980s at the young age of 40.

In 1978, James Meeks, the dean of the College of Law, appointed a special

Clinic History (cont.)

1979 – The Fink report is delivered to the faculty, recommending an expansion of the Clinical Program and additional clinical courses.

Early 1980s – Prosecution Practicum is founded.

1998 – Justice for Children Practicum is founded.

1980

1990

2000

1983 – Mediation Clinic is founded.

2000 – Legislation Clinic is founded.

committee to study the clinic. The committee was charged to answer such questions as whether the clinic accounted for an inordinate portion of the college budget; whether clinic courses were felt to be worthwhile by alumni and students; why students chose to elect or not elect clinical courses; the theoretical basis for clinical education; and whether the clinic should be integrated into other programs at the college. The committee presented its report to the faculty in May 1979.

The report concluded that the clinic did not represent an inordinate amount of the college's budget; in fact, the report strongly recommended the expansion in the number of clinical courses and their integration into a broader, and enlarged, skills curriculum, including Trial Advocacy, pre-trial litigation, and other courses. It further suggested that the college develop additional clinical courses in such areas as commercial law and criminal prosecution. The report fully endorsed the utilization of tenure-track faculty as clinical teachers as "a

source of strength" in the clinic and recommended that their involvement be "continued and enhanced." It suggested greater efforts to inform students of the benefits and availability of clinical programs and concluded that, "clinical courses would be enhanced if they stood, not apart from the rest of the curriculum, but were made to be the culmination of a comprehensive and coordinated program dealing with practice and advocacy skills." In sum, the college's first comprehensive look at its Clinical Program resulted in a ringing endorsement of its structure, function, and goals. Since the study, the college has acted on many of the recommendations and greatly expanded its clinical offerings as well as other practice skills segments of its curriculum.

The story of this expansion is Part II of the history of the Clinical Program, to be published in the next issue of *Clinic News*.

Professor Greg Travalio Becomes New Clinic Director

In January 2005, Professor Travalio, Lawrence D. Stanley Professor of Law, became the new director of the Moritz Law Clinical Program. Professor Travalio succeeded Professor David Goldberger, who had been the director since 1987.



Professor Travalio came to Moritz Law in 1978 and since then has served as the associate dean of Academic Affairs and the associate dean for Professional Relations. He also

currently serves as a Colonel in the U.S. Army Reserves Judge Advocate General's Corps. He has authored or coauthored two books on sales and consumer law, and he teaches in those fields, as well as the first-year course in Contracts. During spring semester, he also co-teaches the Civil Law Practicum along with supervising attorney Elizabeth Cooke.

We want to hear from you!

If you are an alumnus of the Clinical Program at Moritz Law and would like to share a memorable experience you had in the clinic, comment on the clinical program, or just let us know what you are doing now, please contact us.

Write to:
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 travalio.1@osu.edu.

When a Clinical Class Leads to the Supreme Court: A Student's View

Anne Juterbock '05 came to law school thinking she might use her B.S. in business management in a transactional practice. But like so many who come to Moritz Law, she found that opportunities can reshape thinking.

Anne had Professor David Goldberger for Constitutional Law as a 1L. That led to work as his research assistant and participation in the Civil Law Practicum. In the past year, she has helped him with *Cutter v. Wilkinson*, the Supreme Court case that Professor Goldberger argued in the U.S. Supreme Court on March 21.

Cutter v. Wilkinson involves prison inmates who sued the State of Ohio claiming they were denied access to religious literature and ceremonial items under the Religious Land Use and Institutionalized Persons Act. 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 U.S. 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," says Professor Goldberger. "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."

Anne believes the complexity of the lawsuit has given her a better understanding of how a multitude of issues can fit together in a single case. She is, for the first time, considering a career in litigation. Regardless of career choice, Anne has expanded her research skills and has become a more expressive writer. She says Professor Goldberger explains the legal theory behind every assignment he gives, and afterwards provides important feedback about her legal analysis.



Professor Goldberger with current and former students who helped him prepare for his Supreme Court case. Pictured are (left to right): Kelly Ryan, Jennifer Urban '03, Amy Purwin, Jason Small, Professor Goldberger, Christopher Ries, Anne Juterbock, Matt McNeil, Jamie Klausner, Amanda Runyon

Practically, she has mastered the Establishment Clause and, with fellow student Jamie Klausner, drafted the *in forma pauperis* petition that accompanied the initial petition for certiorari filed in the Supreme Court.

Watching Professor Goldberger up close, Anne says that it is clear that his first and overwhelming interest is in serving his clients' best interests. "In a case as high profile as this," she says, "there are groups that try to persuade counsel to emphasize their issues. That's not what's important to Professor Goldberger." Observing him over the past year has also given her a clear sense of how much time and effort goes into preparing a case of this magnitude.

A strong advocate of skills training, Professor Goldberger has involved students in other important cases including *McIntyre v. Ohio Elections Commission*, which also reached the U.S. Supreme Court.



Professor David Goldberger chats with Susan Guerrier Block '99 at lunch after his argument.

Anne believes the complexity of the lawsuit has given her a better understanding of how a multitude of issues can fit together in a single case. She is, for the first time, considering a career in litigation.

Updates from the Clinics

Legislation Clinic

One unique aspect of the Legislation Clinic experience is the strict confidentiality requirement placed on students due to the bipartisan nature of their placements. One way that the clinic provides a rich common experience for students despite the limited nature of “rounds” is by inviting a series of guests to come speak during the classroom component of the clinic. These guests share their insights into various aspects of the legislative process and answer student questions, providing a fuller view than might otherwise be possible. This semester’s guest speakers have included former and current legislators, lobbyists, staff members, academics, and media representatives.

A universal theme centered on quality of life issues.

One recent class benefited from a return visit of four alumni of the Legislation Clinic. Although the clinic has been in existence for less than five years, a number of alumni have moved onto impressive jobs in the public sector. Caris Post ’01 is the director of government affairs and public information officer for the American Lung Association of Ohio. While a clinic student, Caris was placed with the Senate Majority Caucus. Julie Hartzell ’02 is a member of the Administrative Rules Unit at the Legislative Service Commission. As a student, Julie worked at the Joint Committee on Agency Rule Review. Greg Lestini ’02 is the legislative aide for State Senator Teresa Fedor and worked in the office of then Representative, now Senator Ray

Miller. Anthony Sharett ’02 works at the Division of Financial Institutions of the Department of Commerce. His clinic placement was with the Department of Commerce.

The alumni spoke of their various career paths and the reasons they are now in public service. A universal theme centered on quality of life issues. The alumni spoke of the benefits of not being tied to billable hours and the satisfaction of working on issues about which they are passionate. One alumnus pointed out that one can take advantage of numerous leadership opportunities in the community when not tied to the office by billing requirements and noted that the training and experience provided by such positions are invaluable in developing one’s own set of skills. At the same time, all of the guests admitted that compensation as a government employee is less than what they would make in private practice. After discovering that two of the alumni are married to attorneys engaged in the more traditional practice of law, who by implication earn a higher percentage of the family’s income, one student asked how to go about finding such a partner!

Each guest speaker provides an opportunity for the students to ask questions and check their perceptions, which broadens their experience of the legislative process beyond the wall of their individual placements. The alumni guests provided a unique chance for students to ask young lawyers about their paths to their current positions and the trade-offs of choosing a non-traditional job after law school. We are grateful that these former students were willing to take the time to share with this semester’s students, and we look forward to the opportunity to continue our conversations with the ever-increasing group of Legislation Clinic alumni.

Criminal Defense Practicum

Last spring a Columbus Public School substitute teacher was teaching in a class for students who were demonstrating behavior problems. When one of the students was exhibiting particularly disruptive behavior, the teacher walked up behind him, put his hands around his neck, and said, “You know, I could snap your neck.” The teacher then asked the student to step outside the classroom and remain in the hall until he could behave appropriately. While outside, the student pounded on the door and screamed, demanding to be let back into the classroom. Eventually, the student calmed down and was permitted to return to class and complete the assignment.

After a complaint by the student’s parent, the teacher was criminally charged with aggravated menacing (threatening the student with serious physical harm), which is a first degree

Ultimately, the students had to prepare a direct or cross-examination for over 13 witnesses.

misdemeanor carrying a potential penalty of 180 days in jail and a \$1,000 fine. A plea agreement was unlikely and so the case would likely be tried to a jury. The stakes were high not only because the teacher’s freedom was at risk, but because the defendant’s entire professional career was in jeopardy.

The Moritz Law Criminal Defense Practicum took the case, and the two students assigned to the case made repeated trips to the school, talking to almost every teacher and administrator who had any knowledge of both the student involved and the teacher. Ultimately, the students had to prepare a direct or cross-examination for over 13 witnesses.

Updates from the Clinics (cont.)

For the first time in their professional lives, these students had an opportunity to put into practice the lessons that they had learned in law school. The rules of evidence suddenly took on new meaning as Rule 609 loomed in a motion *in limine* to preclude the prosecution from making any mention of the defendant's prior conviction for negligent assault. The students had to conduct jury selection, deliver an opening statement and a closing statement, and handle every legal issue that arose throughout the course of the trial.

After a three-day trial, the jury began deliberations and 30 minutes later returned with a not guilty verdict. To enhance the educational experience, the entire jury remained behind to answer questions from the lawyer-students as well as the prosecution. They were willing to talk about what evidence they thought to be important and what they disregarded, what aspects of the opening statements and closing arguments they believed were compelling, and, ultimately, why they decided as they did.



Outside of class, clinic students review case files and conduct legal research for their cases.

Justice for Children Practicum

The practicum was in a legal quandary.

In January 2004, a drug-addicted mother gave birth to an underweight, addicted baby. The mother initially wanted to relinquish her rights to the child, having already lost her rights to an elder child and having had her two oldest children removed from her custody. However, she recanted at the initial hearing and vowed to work to regain custody of the baby. The Justice for Children Practicum was appointed to serve as guardian *ad litem* for the baby. Unbeknownst to anyone throughout the first seven months of the case, the biological mother was a registered member of a Native American tribe and the putative father was an eligible member of a different Native American tribe. This raised numerous issues under the Indian Child Welfare Act, potentially giving one or both of the tribes in question the right to intervene in the case.

Thanks to the investigation of the practicum, serving as guardian *ad litem*, both the mother's and putative father's tribal status were uncovered, and appropriate notice was filed with each Native American tribe. Moreover, the practicum successfully moved for a paternity determination and established that the putative father

was not, in fact, the child's biological father. Through regular contact and dialogue with the biological mother, the practicum was able to establish and to help her come to grips with the fact that she was not complying with her case plan and that she was not ready to regain custody of her special-needs baby. As a result of the time and commitment of Justice for Children students, the mother renewed her decision to relinquish her rights, and her rights were legally terminated. The child, now 15 months old, has been freed for adoption by the pre-adoptive foster parent with whom the child has been placed since being released from neo-natal intensive care two weeks after his birth.

In a separate case, which is still pending before the Tenth District Court of Appeals in Franklin County, the practicum agreed to serve as guardian *ad litem* for two biological brothers whose parents' rights had been terminated by the trial court. The boys' appellate counsel discovered a conflict of interest which prevented him from representing the boys on appeal—but when the practicum took over the case, the court appointment was only to serve as guardian *ad litem*, not as attorney. The practicum also learned that the guardian *ad litem* in the trial court had supported the termination of parental rights without ever having met with or interviewed the boys.

The practicum students met with the boys, now five years old and 18 months, and determined that the trial guardian had been in error both practically and legally. Under the State of Ohio's jurisprudence of *In Re Williams* and the Tenth Appellate District jurisprudence of *Brooks* and *Swisher*, the trial guardian had been under an obligation to determine the five-year-old's express wishes and to represent those to the

Updates from the Clinics (cont.)

court if those wishes differed from the trial guardian's own recommendations. When the practicum students met with the five-year-old, he expressed a real commitment to his biological mother and made clear that he did not want to give up his relationship—but the trial record was devoid of any evidence of these wishes. The trial guardian had failed to report that the boy's wishes differed from the trial guardian's determination of his best interest.

The practicum was in a legal quandary. As guardian, the practicum should appeal the case and should seek appointment as attorney, as well as guardian, in order to comply with *In Re Williams* and to secure actual representation for the boys. Yet the practicum had inherited the posture of Appellee guardian, defending the trial court's termination of parental rights. Thus, in order to ensure that the interests of the boys were represented, the students filed a Motion to Amend Appointment in which they requested that the court amend its appointment so that the practicum would serve as Attorney/Guardian *Ad Litem* for the children. The court recognized the need the children had for representation and granted the motion, thus making the practicum both the attorney and guardian for the children.

The students also filed a Motion to File a Notice of Appeal in order to amend the posture of the case to allow the practicum to appeal the termination on behalf of their clients. Unfortunately, the court never addressed the constitutional issues raised in this motion, instead denying the motion on narrow procedural grounds. This decision left the boys without any way to appeal the original termination of parental rights in which they were unrepresented. A Motion for Reconsideration is pending.

Civil Law Practicum

Students in the Civil Law Practicum recently experienced the increasingly multicultural makeup of the Columbus community firsthand in scheduling and taking depositions in an anything but routine auto accident case. Their client is a member of the large Somali community in the city. He was turning left onto a busy street when a young woman ran a red light at a high rate of speed and collided with his vehicle, flipping it upside-down. Fortunately, the client was uninjured and there were many witnesses to the accident. Four of these witnesses support the client's version of the facts—most importantly, who ran the red light—but their testimony has been challenging to secure due to language and cultural barriers.

One witness, a Mexican immigrant, had a clear view of the accident as he cleaned the windows outside of his taco stand parked on the corner of the intersection. Three of the witnesses, located in cars at various vantage points around the intersection, were all recent immigrants from Somalia, although they did not know our client before the accident. All four witnesses have difficulty understanding, speaking, and reading the English language.

The students' first attempt at taking depositions of the Somali witnesses was a complete failure. They thought they had successfully communicated the need and the method for two witnesses' depositions through interpreters, but both subpoenaed witnesses called independently at the last minute to say they were not coming. One witness said he was just too busy to attend.

The second called two hours before the scheduled time saying he was in Tennessee on business.

The practicum students learned from their mistakes. A month later, they successfully completed the deposition of the key Somali witness. The client helped by arranging transportation to the deposition for the witness. The students hired a certified Somali translator who spoke the witness's dialect, and the deposition was recorded on videotape as well as by a court

One witness said he was just too busy to attend. The second called two hours before the scheduled time saying he was in Tennessee on business.

reporter. Still, it wasn't perfect. There were times after one of the students asked a yes or no question that the translator and the witness engaged in a lengthy exchange and then the translator turned to the court reporter and replied simply, "Yes." Other times it was clear from the response that the question had been misunderstood, but the students could not tell if the witness or the translator was confused by the question.

Despite the challenges, the deposition was a great experience for the Civil Law Practicum and the students who will be practicing law in an increasingly diverse arena. The value of this multicultural experience was further illustrated in this instance, because the student who deposed the Somalian is a citizen of Turkey who learned English as a second language herself.



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Professor David Goldberger on the day of his Supreme Court argument in the case of *Cutter v. Wilkinson*. Professor Goldberger prepared the case with the help of numerous clinic students (see story on page 8).

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