

## The WYLD Board of Trustees' Position on the Proposed Legal Technician Rule

by Noah Davis and John Brangwin

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At its recently concluded meeting of February 25, 2006, in Tacoma, and after full deliberation by the Board, the WYLD Board of Trustees voted 13-1 against the proposed legal technician Rule. (The WSBA Board of Governors has also, subsequently, rejected the proposed rule.)

### Why We Oppose the Rule

There is no question that there exists an unmet legal need in the state of Washington for persons of lesser economic means. This unmet legal need, as underscored by the Civil Legal Needs Study, occurs in both urban and rural areas, and serves as an impediment to justice.

The question before us is how we, as the legal community, go about addressing it.

One proposal is the creation of a licensed non-lawyer profession to be known as “legal technicians.” Although recognizing that the idea behind the proposal is undoubtedly genuine and benevolent, the proposed rule simply does not directly address the concerns identified in the Study.

### Problem #1: Affordability

The problems identified in the Study essentially relate to the affordability of attorneys. That being said, the WYLD does not see how persons of lower economic means will be able to afford a legal technician; just like lawyers, legal technicians will have basic office- and practice-related costs dictating the baseline price they charge. With no limitation on how much a legal technician may charge, and no evidence that legal technicians will charge less, the rule simply does not address the needs.

### Problem #2: The unauthorized practice of law and failure to enforce

At the moment, a number of individuals are placing advertisements and assisting persons in need of legal services through what is undoubtedly the unauthorized practice of law. To date, there have been very few prosecutions of these individuals. Due to the lack of enforcement, it is questionable how this program will address the current unauthorized practice of law, and it is likewise a cause for concern as to why any individual would go through the rigorous certification process when they can already practice law without real threat of prosecution.

### Problem #3: The confusion over what may be the authorized practice of law

The rule as proposed is not clear as to what services a legal technician may engage. Since the Practice of Law Board has yet to set out the proposed practice areas that a legal technician may offer services, none of us have any idea as to the actual services that the legal technician may perform. This “to be determined” approach is a recipe for disaster, both in terms of disagreement and dissension among the legal community, but most importantly, protection of clients.

Without having a practice area identified, there are more questions than answers. Without more substance, it cannot be determined what services the legal technician would actually be providing.

### Problem #4: Quality of legal services

While not every lawyer on every given case will provide the best legal advice, because of the legal training afforded the lawyer they possess particular ability to spot issues, to research the law and to think critically. Perhaps instead of diluting the quality of legal services through the creation of a non-lawyer profession, a better approach is to make law schools more accessible and more affordable. By attempting to tackle one issue through this rule we are creating another: Unknown injuries to befall clients served by legal technicians without the requisite legal background.

## The Better Course: The WYLD's Proposals

### Proposal #1: Expand GAAP

Instead of adopting/supporting the legal technician Rule, the WYLD proposes expanding the Greater Access and Assistance Project (“GAAP”).

Originally created in 1996, the program has operated nearly exclusively in Spokane County, until recently expanding to other counties.

Under GAAP, the WYLD has partnered with the Northwest Justice Project and CLEAR in helping persons of reduced economic means to be paired with lawyers who have agreed to a reduced fee representation. In Spokane, Snohomish and Kitsap counties, this rate is no more than \$50 per hour; King County is capped at \$75/hour.

We’ve been expanding the GAAP program on shoestring budget, and we are proud to say it is working! Imagine the possibilities by funding GAAP with the same amount of money the Legal Technician Rule would undoubtedly cost.

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## Editor's Column

by Jason T. Vail



I have come to discover, through my conversations with young lawyer friends, that we all, on occasion, ask ourselves the following question: “Why did I become a lawyer?”

It is not necessarily surprising that we would find ourselves facing this question at least once in our careers. The years of schooling and the high cost of education required to join this profession place us in a position where we are almost compelled to continue in the roles we find ourselves in, regardless of our misgivings; given all that we have invested to get to this point, setting everything aside and making a dramatic career change now is almost unimaginable.

Of course, we all come to this vocation from a variety of paths. We arrive at law school with different backgrounds and different motivations. Some of us have always known we wanted to practice law and cannot remember a time when we wanted to do anything else; others of us are not so certain, having had little previous experience or contact with the legal system. As a diverse group, we all come together to share that uniquely excruciating experience known as law school, and it is the one thing that ties us all together in this profession. No matter where or how long ago we obtained our legal educations, we are all able to relate to one another with “war stories” about

our time in law school, particularly the 1L year. But while we come together to share the unifying experience of law school, we soon graduate and find ourselves scattered across the country and around the globe to pursue our own courses through the legal profession. Nevertheless, the large majority of us will opt to become practicing attorneys: in firms, in government, as solo practitioners, as in-house counsel, or in clerkships.

Still, there are a few who don't quite fit this mold, which is the focus of this issue of *De Novo*. Three young lawyers have written articles about their choices of somewhat out-of-the-ordinary legal careers. Paul Marvy writes about how he left his practice as a public defender to coordinate a group that is seeking to expand the right to counsel for indigent litigants in civil proceedings. Keri Jo Smith explains how she went from law school to running a volunteer lawyer program in a rural eastern Washington county. Finally, Aaron Riensche presents a story about how, after law school, he went on to pursue what many of us find unimaginable: more law school.

Also highlighted in this issue are the recipients of the first Loan Repayment Assistance Program (“LRAP”) awards. These attorneys have also chosen somewhat unusual career paths: Instead of prioritizing pecuniary gain, they have opted to practice law for the public good. Their diverse and important work is both impressive and inspiring.

This *De Novo* also continues the ethics-related theme from the last issue with a column by Associate Editor Shelley Ajax on upcoming changes to the RPCs. We hope to continue highlighting ethics issues and the impending changes to the RPCs with this recurring column by Ms. Ajax.

Finally, I encourage you to read President Noah Davis and President-elect John Brangwin's article on the WYLD Board of Trustees' position on the proposed Legal Technician Rule. This proposed rule, which seeks to authorize and regulate certain qualified non-attorneys to perform routine legal tasks, represents a serious effort to expand access to affordable legal services by middle- to low-income citizens. While this state's network of civil legal aid programs provides legal help to thousands of clients every year, a deficiency of resources dictates that direct legal assistance be typically reserved for the poorest of the poor with the highest of “priority” cases. Thousands more, living above the poverty line but still struggling, and with what would be considered “low-priority” legal needs (agreed dissolution or no-asset Chapter 7 bankruptcy are just two examples), are left with an impossible choice between no legal help and paying unaffordable attorney fees. The Legal Technician Rule was designed to provide an alternative source of legal assistance for those who fall in the gap between those poor enough to receive *pro bono* services and those who are

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We are ready to serve hundreds, if not thousands, of qualifying clients at reduced costs with lawyers, both young and older. We just need a little more help to have this program reach into other areas of the State.

#### **Proposal #2: Mandatory Pro Bono Hours**

As has been raised before, with nearly 30,000 lawyers in this state, if the Bar were to institute mandatory *pro bono* hours (30 hours per year), we could generate nearly 900,000 hours (which may be double what the bar current provides). While mandatory *pro bono* hours may not be popular, it is a better fix than this proposed rule.

#### **Proposal #3: Revamp the Proposed Rule**

As stated above, as novel as it is, the rule just doesn't seem to address the real problems identified in the Legal Needs Study, and gives us more questions than answers. This rule needs to be retooled by focusing on one or two particular practice areas and spelling out exactly what a legal technician may do. Even then, there still exists no evidence that the people who may use legal technicians are the ones whom the Legal Needs Study identified as having unmet legal needs.

A better approach is a very limited pilot program in a particular area, perhaps bankruptcy or family law, so that we can all study the effects and unintended consequences, and we can all be informed of the benefits or fallacies of such a program.

#### **Conclusion**

The WYLD is gravely concerned with the unknown course the Legal Technician Rule is chartered to sail. We are also concerned whether it will even float – that is, serve the purpose for which it was designed. Washington state should all stay out of this boat until it has undergone more testing, as the danger of sinking is as high as ever.

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## President's Column

## What to Do in the WYLD

by Noah Davis



As I drove back to the office from Seattle's "U Village," where I had given a short presentation to lawyers representing the second class of the WSBA's Washington Leadership Institute ("WLI"), and where I attempted to

squeeze about 100 hours of info on the Washington Young Lawyer Division ("WYLD") into 15 minutes, I realized a couple of things.

First, not only am I the WYLD's version of the Energizer Bunny, as WSBA President Brooke Taylor likes to say, but I'm probably much more like a crazy bunny – hooked up to a caffeine "IV," munching on over-the-counter amphetamines. But can you really blame a guy for getting so excited about WYLD stuff – especially all of the opportunities that are available for young lawyers?

It probably sounds nuts, but I really love the WYLD. Hmm, perhaps I'll be like the fraternity guy who you see 20 years later still decked out in all of his Greek paraphernalia, his room adorned with paddles, letters and the like, and still organizing softball games with kegs at second (not that there is anything wrong with that)... that's me and the WYLD.

In any event, and assuming you're still reading, perhaps I should get back to my second earth-shaking realization (from that fateful I-5 drive home the other day), that I recognized that my presentation, notwithstanding my good intentioned haste, left out any description of all the incredible things that we (the WYLD) are doing and all the ways that the WLI Fellows can be involved. Grrr, I say.

But, fortunately, since I'm still president of the WYLD (for a bit longer), I have this column and sounding board for my periodic brain freeze: the ultimate record straightener-outer. So, for this edition of the *De Novo*, I wanted to not only get the good work of the WYLD out to the fellows, but also to all young lawyers and all law students and to encourage all of you to join a WYLD committee or attend an upcoming event.

So, to that end and in future issues, we'll be sure to post a calendar of events in every

*De Novo* so that you can stay in tune with all of our activities. We'll also be posting an updated calendar of events on the WYLD WSBA site, [www.wsba.org/lawyers/groups/wyld](http://www.wsba.org/lawyers/groups/wyld), so you can always be in the know. In anticipation of this calendar roll-out, and although what follows certainly isn't exhaustive, here are some of the more recent events:

In February, and though about 5,930 of you will have missed this one by the time this edition comes out, we had the fifth edition of the Young Lawyer Express (third overall Ski-LE, though only second with actual snow and skiing), where we combine 2.75 hours of free CLE credits with social events for a fun-filled weekend in different parts of the state two times per year. The next event will occur in the summer (perhaps July or August), so keep a lookout as these events are usually big draws.

Also in February, we began what we hope to be an annual event where we partnered with the WSBA's Family Law Section (and Seattle U's Access to Justice Institute) in putting together a free six-hour CLE on WYLD GAAP Family Law Basic Skills for lawyers (young and "older"), who had agreed to take a reduced fee representation in King, Snohomish, Kitsap or Spokane counties. GAAP stands for the "Greater Access and Assistance Project," championed by former young lawyer activist Mark Kim and current WYLD Trustee Rachelle Anderson of Spokane, and which now is spreading like wildfire across the state, in pairing qualified low-income clients with lawyers on a reduced-fee scale.

In early March, we had the "Bridging the Gap" CLE where the WYLD, in conjunction with the King County Bar YLD, we put on a behemoth two-day basic skills CLE for newer lawyers. This program may well serve as the basis for future programs that may one day be mandated for new young lawyers.

Also in March, the Public Service Committee partnered with SU's Access to Justice Institute in coordinating a free Immigration Clinic at the Rainier (Seattle) Community Center for clients in need.

On March 3, the WYLD Membership Committee partnered with the Snohomish County YLD for a Hockey Night in Everett to watch Seattle play Everett. The Membership

Committee has also put together a Sonics Night, for those basketball lovers, to take place April 14 at 7:30 pm. My recollection is that the tickets will be at group rate, and therefore a bit cheaper.

In late March, the WYLD will be involved with the State YMCA Mock Trial Championships in Olympia, and also assisting community and law-related leaders in supporting the Youth and Law Forum, which takes place in April.

Also, the CLE Committee is busy planning a gi-normous WA-OR Reciprocity CLE, which is envisaged to cost a lot less than were you to do it on your own, so keep an eye out for this one. And if you go, please say "hello," as I'll for sure be there, too.

Beyond that, the Public Service Committee will be working on the very successful "We the Jury" program, in which young lawyers bring a mock trial to high schools for students to participate in. And, the Aspiring Youth Program will be working on "Goldilocks: Trial of the Century" for presentation to fourth graders, to take place in April and May.

In addition to the WYLD's public-service focus, it also arranges weekly social events through the Membership Committee, all of which are welcoming and easy to join. In fact, one of the best ways to become involved is to join one of the WYLD's list serves. Perhaps the Membership list serve, or public service, or CLE committees would be good choices. For more info, please visit the link below, or else e-mail Amy O'Donnell at [amy@wsba.org](mailto:amy@wsba.org) and ask to be added to one of our list serves. [wsba.org/lawyers/groups/wyld](http://wsba.org/lawyers/groups/wyld).

And remember, you are automatically a member of the WYLD if you are 36 and under OR in your first five years of practice (whichever is later).

If we haven't crossed paths, please come out soon and say hello, as I have only six months left as your prez, and I'd love to meet you.

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## Working for a Sort-of *Gideon*, on the Civil Side

by Paul Marvy

And you may ask yourself-well...how did I get here?  
 Letting the days go by/let the water hold me down  
 Letting the days go by/water flowing underground  
 Into the blue again/after the money's gone  
 Once in a lifetime/water flowing underground.  
 And you may ask yourself... How do I work this?

– *Talking Heads (1984)*

As do most novice lawyers, I quickly got the news that our legal system can be a treacherous place for those with little legal training or experience. Along with several of my own not-to-be-repeated experiences as a neophyte public defender, I viscerally remember watching a civil *pro se* defendant go down in flames in a case that I believe I could have won. While I am now growing out of the handicaps associated with being a young lawyer, I have become increasingly aware of the great many self-represented litigants who are permanently at a serious disadvantage in our justice system. In fact, it is my job to help change this sad fact.

Great numbers of our state's civil litigants involuntary share the plight of the *pro se* defendant I had watched, simply because they are too poor to afford legal help. As a consequence, in serious matters, such as housing, access to medical care and even child custody, substantial numbers of people lose important rights regardless of the underlying legal merits of their case. I now coordinate some portion of the mounting storm of efforts to end this morally awkward situation – a position that certainly qualifies as the non-traditional legal work that is the theme of this issue of *De Novo*, and a position I had a hard time imagining until some months into the work.

In retrospect, I had no idea what I was doing when I started law school. I had left a cushy but sometimes boring job in San Francisco working on research studies such as “*Continuity and Change in Young Adult Drinking Behavior: Evidence from the National Longitudinal Survey of Youth*.” I came north to my now-wife's home state, hoping to find work that furthered social justice on a broad scale, that allowed me some autonomy, that provided compelling intellectual puzzles and co-puzzlers, and that paid. And for reasons that now elude me, law school seemed a good way to get there. In short, I was dreaming.

A chance encounter with a public defender who posed abundant quantities of heart, mind, and good sense led to three years of working for The Defender Association, first as an intern working on systemic change efforts, and later as a staff attorney defending accused misdemeanants. Not dreamy work to be sure – but close, like the fuzzy recollections one gets in the morning. Then, out of the blue, I got the chance to test whether the imagined scenario that had prompted my career change was really what I wanted.

Over the last few years, a remarkable group of advocates from across Washington have explored how to address the glaring unmet legal needs of the state's poor. Some began examining the legal bases of a right of effective access to the courts. Convinced such a right exists and that it includes a right to counsel for certain civil litigants, they started discussing strategies for obtaining recognition of that right. With good luck and good timing at which I still marvel, in February of last year, I was offered the chance to participate in this effort as project coordina-

tor for the Committee for Indigent Representation and Civil Legal Equality (“CIRCLE”).

To some, the idea of a civil right to counsel may resemble pie in the sky. That chimerical resemblance has more to do with the parochial nature of our legal experiences and educations than anything inherent in the concept itself. At common law, the right to counsel in civil cases was securely in place by at least 1494. Today, some 50 nations, including the entirety of Europe, currently provide for appointed counsel in a range of civil cases as a matter of right. And at home, a broad range of state and federal law recognizes that individuals have a right of access to the courts, and that the judiciary has a responsibility to ensure the court system is fair, open and equitable.

Armed with this knowledge, and the gut-level recognition that a legal system unusable by large segments of the population is simply not a “justice” system, a growing chorus is now urging legislatures and courts to respond to the appalling gap between the civil legal needs of the poor and the services available to assist them. The president of the American Bar Association has called for recognition of a civil right to counsel, as have prominent sitting state and federal judges. Locally and nationally, advocates are developing strategies to translate these voices into exercisable rights.

Being among these strategists is an exciting, and sometimes strange, position. Occasionally, I require a good hard pinch to remind myself I'm here, just as I used to when the judge would ask, “Response, counsel?” and I'd be forced to remember I was, indeed, a lawyer. As is often the case in public interest work, I the lawyer/advocate have benefited tremendously from being privileged to do it. I am also very optimistic that soon this work will bear fruit for its intended beneficiaries – the thousands of individuals who are routinely denied meaningful access to the justice system simply because they are poor.

*Mr. Marvy serves as a project coordinator for the Committee for Indigent Representation and Civil Legal Equality (“CIRCLE”).*

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affluent enough to afford an attorney. The rejection of this rule by the WYLD Board of Trustees, and the subsequent rejection by the WSBA Board of Governors, does not mean that the legal needs targeted by the proposed rule have disappeared. Rather, as Mr. Davis and Mr. Brangwin explain, the WYLD is in a position to take a leadership role in addressing these legal needs through alternative programs, and *De Novo* will continue to provide you information about the efforts undertaken in this regard, and, of particular importance, how you can help.

As always, I invite you to continue sharing your ideas and opinions with the *De Novo* readership through your submissions. My hope is that you find the following stories of these young lawyers, as well as the discussion of the best ways to address significant legal needs of low-income people in this state, to be thought-provoking and inspiring. Perhaps you may even gain a different perspective on the answer to your own occasional questioning of why you entered this profession in the first place.

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## Six Weeks as an Ecuadorian Law Student

by Aaron Riensche

Last fall, with law school and the bar exam under my belt, and the payments on a king's ransom in school loans coming due, I did the logical thing: I left the country. While much of my two months in Manta, Ecuador, was spent on the beach, I also spent a few evenings each week satiating my curiosity about Ecuadorian law at the local law school. Since my presence there made me the *de facto* representative of the Washington legal profession, I feel compelled to share some of the highlights.

Located at the Universidad Laica "Eloy Alfaro" de Manabí, a public university without the resources to attract international visitors, the law school is a six-year program. Every class is taught in the evening, Monday through Friday, and the year is scheduled one class at a time, with each class lasting one-and-a-half to two months, from April to February. Having six weeks available, I decided to attend one class from each year each week, working up through the curriculum from first to sixth year.

My first class, Roman Law, was disappointing. The classroom windows opened onto a noisy street, students chattered freely, and the professor – a brilliant but elderly man – mumbled and regularly lost his train of thought in mid-sentence. I tried to maintain perspective, however. Law is not a graduate program in Ecuador, meaning that most first-year law students are in their first year of higher learning, and I am unsure how favorably U.S. college freshmen would compare if forced to spend five evenings a week in a hot, noisy classroom with a doddering old professor studying Roman Law. As for the professor, I assume that had he been a law professor in the U.S., he would have retired long ago with a comfortable pension, but things don't necessarily work this way in Ecuadorian public universities.

I was happy to move on the following week to Gender and Human Rights, where the students were slightly older and the professor encouraged me to participate in a field research project. He had divided the class into groups and assigned each to report on the conditions facing a particular class of "vulnerable persons." I joined the "pregnant or abused women" group, which investigated the government's implementation of two recent laws.

The Law of Free Maternity requires the government to provide a source of free maternity services to indigent women. We visited the public Health Center and the local hospital to monitor compliance. The Health Center was crowded with women, either pregnant or carrying newborns, lining the narrow hallway. The hospital was austere. As we entered, a cadaver was wheeled out the front door and loaded into a moving van. The maternity ward was hot, and new mothers lay listlessly alongside newborns. Although every woman we interviewed reported having received adequate maternity services free of charge, the Health Center director informed us that full compliance with the law is limited by funding.

The Law Against Violence Toward the Woman and the Family is a primary weapon in Ecuador's uphill battle against domestic violence. Charged with enforcement of the law, Manta's Commissary for the Woman receives 20-25 complaints of domestic violence daily. The commissar attributed this primarily to the region's *machista* culture, but also said that socioeconomic class plays a significant role. When the law was first promulgated, in the mid-nineties, the commissary received few complaints, partly due to a lack of enforcement – the office was seen merely as a paperwork repository and the trouble of reporting an incident was rarely worth the risk of reprisal – and partly because the abuser was usually the breadwinner, so enforcing the law against him often meant the victim and the children would go hungry.

The commissary is addressing this problem with a tool called a "ticket of assistance." While this functions as an arrest warrant against the abuser, it also entitles the victim to a small stipend that offsets somewhat the loss of income. The commissar stressed that domestic violence is still an enormous problem, but the volume of complaints shows that victims are at least empowered to come forward, a big step in a long walk.

My third-week class, Research Methodology II, was overshadowed by the arrival of exiled former president Lucio Gutiérrez. A leftist whose views and military connections had drawn comparisons to Venezuela's Hugo Chávez, Gutiérrez had been literally chased out of Quito in April amid accusations of corruption. When word came that he would be flying into Manta, throngs of his supporters surrounded the airport, and the U.S. Air Force, fearing a security breach similar to what had occurred in Quito, ordered its morning sorties into Colombia not to return to Manta. When Gutiérrez arrived, the national police had closed the airport to civilians, and Ecuadorian Air Force personnel had filled the landing platform. As soon as he exited the aircraft, Gutiérrez was taken into custody and flown to a Quito prison.

Because Gutiérrez had claimed to remain the legitimate president of Ecuador, the current government charged him with the crime of Threat Against the Internal Security of the State. When my class broke into groups to prepare final research project topics, I suggested that my group study this charge. Then, having convinced my classmates to select a vague and complex area of law, I ditched them at the end of the week.

By my fourth week, the school term had started to run up against the holiday season. I only had one day of Legal Medicine and Forensic Psychology, as the professor had canceled four days of class due to some holiday and the student body elections. In my one day of class, I was impressed to discover that the professor was a practicing medical examiner whose students had observed two autopsies already that term.

My fifth week, due to the Day of the Dead and a couple minor holidays, I only had one day of Comparative Law. Despite the brevity of our acquaintance, the professor did manage to contribute to my overall experience by calling me "Doctor" after seeing "Juris Doctor" on my letter from the dean, and the title soon caught on with my classmates. I admit I did little to discourage this.

Finally, in my sixth week, because class was canceled entirely in observance of the university's anniversary, I attended the annual university parade instead. Every year, the first-year students from each department create floats for the event. It is chaotic and disorganized, and most entries make either jokes or political statements. This year's primary object of derision was the proposed American Free Trade Agreement. One float depicted Uncle Sam strangling an Ecuadorian. Another portrayed corporations, represented by such costumes as a giant cellular phone, watching over negotiators' shoulders. In a third, a group of students displayed the various flags of South America while Uncle Sam stood in the middle holding a bucket full of money.

Fortunately, the university population was much more receptive to a visiting law student from the U.S. than to the idea of free trade with the United States. This was not a polished and translated summer study-abroad program, and it would have been difficult without the welcome of everyone involved. The hospitality of the faculty, the administration, and the student body exceeded my expectations and made this a rich and rewarding experience, both personally and professionally.

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## My Experience as a Volunteer Lawyer Program Coordinator

by Keri Jo Smith

Right after law school, I accepted a position with the Whitman County Volunteer Lawyer Program (“VLP”). As a young attorney coordinating a VLP, I was able to gain invaluable experience working with an underserved population. Even in a small, rural county like Whitman County, there are many low-income people in need of legal services who have nowhere else to turn. The Whitman County VLP, like VLPs in nearly every other county in Washington, is on the frontline of providing those needed services. Nevertheless, the need for low-income legal services greatly exceeds the resources available to provide such services, so unfortunately only about a quarter of low-income people actually receive the legal assistance they require. As a result, many low-income people are incapable of asserting their legal rights, and perhaps are even taken advantage of simply because they cannot afford legal representation. The VLPs throughout the state work every day to provide legal assistance to as many clients as possible, relying primarily upon volunteer attorneys who donate *pro bono* hours, delivering services ranging from advice and consultation to full legal representation.

The Whitman County VLP, like most other VLPs statewide, receives most of its clients through Northwest Justice Project’s CLEAR line. This is a telephone hotline that any person in the state of Washington with a civil legal problem can call. If the caller meets the income and eligibility guidelines, the caller is given the opportunity to speak with a legal advocate, most of whom are lawyers. At that time, the caller receives some legal advice, and in many cases will be referred to a VLP. Some people are able to have all of their questions answered over the phone, and those needing additional, in-person follow-up are then referred.

Volunteering with a VLP like mine is an excellent way for new attorneys to gain experience with civil law and meet many local attorneys. When volunteering, new attorneys can determine what type of case they would like to accept and the range of services they want to provide. Volunteer Lawyer Programs all across the state are in constant need of new volunteers. Often, and particularly in small counties where the pool of available attorneys is limited, it is hard to find local attorneys who would be willing to accept a full-representa-

tion *pro bono* case. However, by accepting such a case, the attorney can gain CLE credits, as well as gain hours towards the recommended *pro bono* hours under the RPCs.

Though I have recently pursued other employment, I was fortunate to have the opportunity to coordinate Whitman County’s program and to provide much-needed assistance to our many clients. Going straight from law school into coordinating such a program was an excellent way to learn the law, as well as make many connections with attorneys throughout the community. Through my position as the coordinator, I interacted daily with local attorneys. I was also able to obtain a better understanding of civil law, focusing mainly on family law. I was also able to become familiar with numerous court forms and procedures. Whether you are looking for work straight out of law school or simply seeking to donate your time as a volunteer, I encourage you to contact your county bar association’s Volunteer Lawyer Program.

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## ABA Midyear Meeting Report

by Jennifer Brugger

The American Bar Association Midyear Meeting was held in Chicago on February 9-14, 2006. Several members of the WYLD attended the meeting as delegates. The meeting was originally slated to take place in New Orleans, Louisiana, but, after much discussion, the ABA leaders decided to move the meeting to Chicago. The victims of Hurricane Katrina were a primary focus of the meeting, and the rebuilding of the affected areas of the south (and the resulting legal issues) were discussed frequently in the sessions.

The ABA Young Lawyers Division meeting kicked off with a plenary session on Friday. ABA/YLD Chair Christina Plum gave an update on the activities of the division and presented several awards to individuals for exceptional service to the YLD.

Before and after the plenary session, there was YLD programming (including CLE sessions) scheduled. One session included a

hodgepodge of YLD topics. It included information on ABA/YLD subgrants (of which several have been awarded to the WYLD in the past), strategic planning for young lawyers divisions, and a presentation about a public-service project involving a teen-court program in Mississippi.

The ABA/YLD Assembly was held on Saturday morning. Our very own WYLD president, Noah Davis, led the Pledge of Allegiance for the 200 young lawyers in attendance. It was a great honor for the WYLD and it appeared much more distinguished than the two of our WYLD members who had to wear Pittsburgh Steelers attire because of a lost bet.

There were many interesting topics discussed at the Assembly. It was exciting to be a part of such a dynamic and enthusiastic group. The YLD chair began by recognizing the members of the YLD who were instrumental in assisting the victims of Hurricane Katrina as di-

saster-relief legal assistance coordinators. The consent calendar was adopted, which included such cutting-edge topics as immigration law issues, asbestos-related tort litigation, and human-rights issues.

Three resolutions were debated, and ultimately passed, during the Assembly. The first one was very timely for the state of Washington in light of our recent failed voter referendums last November. Resolution 103 supported the YLD’s opposition to legislation that limits medical malpractice lawsuits and opposes creation of health care courts. There was vigorous debate on this topic from several different perspectives.

An unpopular resolution that was debated before the Assembly was the ABA Board of Governors’ proposal to increase ABA dues. That has a substantial impact on young law-

*continued on next page*

## Ethics Corner

## Are Lawyers Becoming Lawyer Police?

by Shelley A. Ajax

The Rules of Professional Conduct (“RPCs”) for Washington, as adopted in 1985, were based primarily upon the American Bar Association’s (“ABA”) Model Rules of Professional Conduct. In 2000, the ABA appointed a commission to revise the model rules. The new ABA rules were adopted in 2002, and there were many revisions. As a result, the WSBA Board of Governors appointed a committee (the Ethics 2003 Committee) to evaluate Washington’s RPCs. The committee issued its report recommending substantial revisions to the Board of Governors in March 2004. The Board of Governors made modifications and presented the rules to the Washington State Supreme Court. The rules were then published for comment through April 29, 2005.

Based on the feedback received by the Washington State Supreme Court, there were concerns about adding lengthy comments or comments that may be construed as substantive in nature to the rules. That concern was conveyed to the Ethics 2003 Committee in August 2005. The committee promptly responded in September 2005. As of yet, the proposed rules have not been adopted. Nevertheless, becoming familiar with the proposed rules early is paramount, as it is this author’s opinion the proposed rules will become effective in the near future. This will be an on-going article, discussing some of the proposed changes and exploring how they may affect your practice, when and if the revisions are adopted.

There is a significant change to RPC 8.3, which addresses a lawyer’s obligation to report professional misconduct. The current rule, as adopted in 1985, provides that a lawyer “should” report misconduct the lawyer has knowledge about to the “appropriate professional authority.” The type of misconduct that should be reported is one that “raises a substantial question as to that lawyer’s honesty, trustworthiness or fitness . . . .” The rule for reporting a judge for misconduct is similar. The caveat, which remains in the proposed rule, is that disclosure of information protected under RPC 1.6 (confidentiality) is protected.

The proposed rule is substantially different in that it requires a lawyer with knowledge of misconduct “shall” report the violation. The comments indicate that does not mean every violation must be reported. There is a measure of judgment that must be used in each and every case. Unfortunately, this may cause even more confusion, as every lawyer has a different subjective standard toward the practice of law. Behavior is definitely subjective, and the rule may leave some pondering whether to report or not report. As a result of this ambiguity, it seems better to leave the reporting requirement as “should,” as the rule appears to require some degree of subjectivity.

Once a decision is made to report a violation, the question that arises is to whom the report should be made. Both rules indicate the report should be made to the “appropriate professional authority.” There is no indication who the proper authority would be under certain

circumstances. For a young lawyer, this vagueness makes it difficult to determine what to do if you are caught in this situation. Should it be reported to a senior member of the county bar? Should it be reported to the county bar board association? Should it be reported to the WSBA? Depending upon the situation, it may be best to obtain an objective opinion from the county bar or a senior member of the county bar association who practices in the same area where the alleged violation occurred. But does the county bar or a senior member have “authority”? It is unclear whether the rule is revised as submitted or not. Nonetheless, since the revised rule indicates a lawyer “shall” report, it then becomes even more important to know where one must report.

In summary, both the new rule and the proposed rule leave young lawyers wondering what conduct is “substantial,” who to report misconduct to, and whether reporting is indeed required. I would surmise the ethics line may be of great assistance for young lawyers to obtain answers to these questions on a case-by-case basis. Nonetheless, we are at a great disadvantage if lawyers are now supposed to police other lawyers.

*Shelley A. Ajax is associate editor of De Novo and solo practitioner at Ajax Law Firm. She can be contacted at 509-735-5055 or shelley@ajaxlawfirm.com. All opinions are solely her own and not those of the WYLD, the WSBA, or De Novo.*

### ABA Midyear Meeting Report from previous page

yers who are just starting out in their legal careers. It was a close vote, but the resolution was passed by the delegates.

The third resolution involved immigration laws. The proponent opposed the detention of non-citizens in immigration and removal proceedings except in extraordinary circumstances, including a determination that the person presents a threat to national security or public safety, or presents a substantial flight risk. There were several speakers for and against the resolution and the resolution was approved by the Assembly.

Several leaders of the “big bar” (the ABA) were present and spoke to the Assembly. ABA President Michael S. Greco spoke to the del-

egates about the importance of the participation of young lawyers in the ABA. ABA President-elect Karen J. Mathis also addressed the group and encouraged young lawyers to become involved with ABA sections, committees, and divisions. The chair of the ABA House of Delegates, Stephen N. Zack, talked to the group about how impressed he is with the work of the YLD. It was inspiring to hear from the ABA’s top people about the close relationship between the YLD and the ABA’s other sections and divisions.

The ABA meeting was not all work and no play. There were a number of fun social events planned to entertain the attendees. On Thursday night, the YLD local host committee spon-

sored a welcome event at a local hot spot. The Friday night YLD dinner and dance was held at the very nice Union League Club in downtown Chicago. Social hour was followed by a delicious dinner. After dinner, a DJ played a variety of music for all ages, as this event was attended by not only members of the YLD, but the Tort Trial and Insurance Practice Section, and the General Practice, Solo, and Small Firm Division as well. It was nice to get to know other young lawyers from across the country and to meet attorneys from other sections of the ABA. There was much dancing and everyone had a good time. Saturday, after the As-

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# The WSBF Loan Repayment Assistance Program Selects Its First Five Recipients

by Paula Littlewood

After several years of pulling together the details of the program and securing the necessary funds for the first year, the Washington State Bar Foundation (“WSBF”) began accepting applications last September for its Loan Repayment Assistance Program (“LRAP”), and the response was fantastic! More than 60 applications were received in this first application cycle, making the selection of five recipients extremely difficult for the LRAP Advisory Committee, as all merited consideration.

The five recipients selected this year will each receive \$5,000 as a forgivable loan to help repay educational debt, and will be eligible to receive \$5,000 each for four additional years so long as they remain in qualifying employment and there is funding to continue the program. Under the terms of the program, forgiveness of the loans will begin after three years in qualifying employment. Loans are not forgiven in full until completion of five years of qualifying employment.

The debt loads (i.e., amount owed on educational loans) for the recipients this year range from \$55,000 to \$123,000, and their salaries range from \$38,000 to \$50,000 per year. Their bios are below:

## Sara Beigh

Sara graduated *magna cum laude* with a B.A. in Elementary Education from Saint Martin’s College, then earned her J.D. from Gonzaga University School of Law in May 2004. Since November 2004, she has served as deputy prosecutor for the Skamania County Prosecutor’s Office in Stevenson. Sara has also served on the fundraising committee for United Way and tutored developmentally disabled women in reading and math for the Literacy Network.

## Karey Gallagher

Karey graduated with honors with a B.A. in Sociology and Political Science from Gonzaga University, then earned her J.D. from Gonzaga University School of Law in May 2004. Karey represents victims of domestic violence for the YWCA Domestic Violence Civil Legal Assistance Office in Spokane. Karey has also served as an intern at the Spokane County Superior Court and at Columbia Legal Services.

## Mary Neil

Mary graduated with a B.A. in Law and Diversity from Western Washington University and earned her J.D. from Gonzaga University School of Law in May 2003. Since August 2003, Mary has been the cultural and natural resources staff attorney with the Lummi Indian Business Council in Bellingham. Mary worked as an intern for the Lummi Nation in the Public Defender’s Office while in college, and also did an internship with the Officer of the Reservation Attorney in the summer of 2001.

## Amy Dempsey

Amy graduated with a B.A. from Gettysburg College in 1996, spent a semester studying Public Law at American University in Washington D.C., and earned her J.D. from the University of Vermont School of Law in May 2001. Since 2004, Amy has served as a trial attorney for the Associated Counsel for the Accused in Seattle, providing legal representation to indigent clients. Amy has worked as an attorney for the Pacific Legal Foundation on appellate environmental cases. Before moving to Washington, she served as a staff attorney at the Fulton County’s Public Defender’s Office in Atlanta, Georgia. While in law school, she externed for the Supreme Court of Georgia. Amy is admitted to practice law in both Georgia and Washington.

## Soren Rottman

Soren graduated with honors with a B.A. in International and Latin American Studies

from Yale University and earned his J.D. from the University of Washington School of Law in June 2001. Soren works for the Eastern Washington Office of the Northwest Immigrant Rights Project, providing legal representation to low-income immigrants in Granger. He joined NWIRP as a staff attorney in June 2002 and became the directing attorney there in August 2005. Soren has worked as an extern for the U.S. Court of Appeals for the Ninth Circuit and a paralegal for the Border Association for Refugees from Central America. He also holds a second job as an ESL instructor for Yakima Valley Community College.

So *congratulations* to the LRAP’s first five recipients, and thanks especially to the three WSBA sections (Administrative Law, Family Law, and Labor and Employment Law) who made donations to help insure this program became a reality! In addition to the sections’ contributions, an affiliation relationship with Sallie Mae (who will offer loan consolidation services to WSBA members) provided the funding to get the program off the ground this year.

Dependent on funding, the Foundation hopes to add five additional participants next year and will begin accepting applications for the 2006 cycle August 1, 2006. For more information, please check the WSBA website at <http://www.wsba.org/lawyers/lrap.htm>, or contact Paula Littlewood, WSBA deputy director, at [paulal@wsba.org](mailto:paulal@wsba.org) or (206) 239-2120.

*Paula Littlewood is the WSBA’s deputy director.*

## WYLD Night at the Sonics

Organized by the WYLD Membership Committee

## Seattle Supersonics vs. the LA Clippers

7:30 pm – Friday, April 14, 2006

Visit <http://www.wsba.org/lawyers/groups/wyld>  
for more details and ticket information.

## The ABA-YLD 2006 Spring Conference Comes to Portland, Oregon, May 18-20

by Julia A. Bahner

The ABA Young Lawyers Division (“YLD”) annual Spring Conference will take place close to home this year in Portland, Oregon. The conference will commence on Thursday, May 18, with a welcome reception, and will continue with two days of programming from May 19-20, 2006. The conference will be a great chance to network with young lawyers from across the country and to gain free CLE credits. In fact, the conference is a great deal because registration is absolutely free. The conference hotel is the Hilton Portland and Executive Tower, 921 S.W. Sixth Ave., Portland, [www.portland.hilton.com](http://www.portland.hilton.com). Accommodations for conference attendees ranges from \$119 single/double to \$139 per night.

Free CLEs to be offered at the conference include the following: Basic Transactional Law; Effective Internal Investigations; Family Law Mediation; Issues Involving Sexual Orientation in the Workplace; and the Health of Infants, Toddlers, and Preschoolers in the Child Welfare System. Additionally, a panel for those interested in becoming law professors will be presented, as well as panels addressing productivity in the workplace and maintaining a better law practice. A diversity

training panel will address practical issues for navigating the politics of race, gender and other protected classes. Additionally, financial planners will be on hand to meet with young lawyers to discuss their financial goals. This is just a sampling of what will be offered at the conference. There will also be plenty of workshops addressing public-service projects and programs that have been successful across the country and can be replicated here in Washington. There will also be plenty of bar leadership workshops addressing fundraising and public-service issues.

Other highlights include a great social event/dinner on Friday, May 19, and a wine tasting showcasing wines from Oregon. The Portland host committee promises that the dress code will be “Portland Casual,” so there will be no need to be worry about wearing suits each day.

This conference will also be a joint conference with the ABA AIDS Coordination Project’s Third HIV/AIDS Law and Practice Conference. YLD conference attendees can attend programs offered as part of this conference, bringing together both new and seasoned practitioners of HIV/AIDS related law and

advocacy to explore complex legal issues, exchange practice strategies, and strengthen bonds as a community of advocates.

For more information go to [www.abanet.org/yld](http://www.abanet.org/yld) for detailed program and social event information, and to register online. Register for the conference and social events and reserve your hotel rooms by no later than April 21, 2006, to take advantage of the early-bird discounts. Next year, the fall and spring ABA YLD conferences will be in Baltimore and Montreal, so I hope that young lawyers from across Washington will attend this event while it is so close to home. Rides to the conference may be available to people interested in carpooling. If interested in this option, please email Mark O’Halloran at [markohalloran@earthlink.net](mailto:markohalloran@earthlink.net) with your name and contact information.

*Julia A. Bahner is a WYLD King Country trustee and a member of the ABA YLD CLE Team. She is an associate at Lane Powell PC. She can be reached at 206-223-7436 or [bahnerj@lanepowell.com](mailto:bahnerj@lanepowell.com)*

### WYLD President-elect & Trustee Applications Sought

Young lawyers interested in serving on the WYLD Board of Trustees are invited to submit applications for the following positions:

- Trustee, King County District
- Trustee, Peninsula District
- Trustee, Pierce County District
- President-elect, Washington State

Applications must be received by 5:00 p.m. on Monday, May 1, 2006.

For detailed information and application instructions, please visit <http://www.wsba.org/lawyers/groups/wyld>.

### ABA Midyear Meeting Report from page 7

sembly, members of the Washington delegation met for lunch at a local Italian restaurant where they enjoyed “Chicago style” pizza. Although there was a great deal of business conducted at the ABA Midyear Meeting, there was time to relax and have fun as well.

The ABA is a great way to get involved in programs and projects that really make a difference in today’s world. Participation in meetings is a rewarding and valuable experience. Members have a chance to learn about member-service and public-service projects from across the country, and can bring the programs back to their states to implement locally. Young lawyers can also network with other young lawyers with diverse backgrounds and experiences.

For more information on the ABA, contact any member of the WYLD Board of Trustees.

*Ms. Brugger represents the Peninsula District on the Board of Trustees for the WYLD. She is a deputy prosecuting attorney in Kitsap County. She can be reached at [jbrugger@wapa-sep.wa.gov](mailto:jbrugger@wapa-sep.wa.gov).*

## Fifth WYLD Express a Success!

by Adrienne Keith

The fifth “WYLD Express” was a great success! This free CLE, planned and organized by the Washington Young Lawyers Division (“WYLD”) membership committee, brought 50 young lawyers from across the state to Tacoma on February 25, 2006. Those who attended were treated to a view from the local bench, a presentation on working well with support staff, and a visually-rich depiction of the “Ungroomed Run,” from failed mediation to trial. The CLE itself was held at the easily accessible Red Lion Hotel in Tacoma.

The Honorable Katherine Stolz, who kindly filled in on short notice for Judge Kathryn Nelson, offered her “do’s and don’ts” of trial and motions practice. Judge Stolz, who was elected to the Pierce County Superior Court in 2001, brought a wealth of private practice experience and dry humor to her presentation. Some tips she offered included: Be polite to all court personnel; be understanding when others make mistakes because you will also make mistakes and need the favor; pay attention to the body language of judges and commissioners to pick up on when they have heard enough; and be sure to have a hobby to balance out the stress of law practice. Judge Kathryn Nelson’s succinct handout provided additional guidance on how to prepare for motions, observe courtroom procedure, and best argue motions.

Barbara McInville, of the Law Office of Robert Helland, spoke about effectively using paralegals and staff in your practice. Given her background as a legal secretary and paralegal, Ms. McInville was able to highlight many of her “top ten do’s and don’ts” with stories from personal experience. A valuable basic tenet of staff management included: “Your staff is not going to do consistently excellent work *just* because you want them to.” Ms. McInville offered other tips, such as don’t change the rules without advance notice, and do have fun. Her extensive reference materials included more helpful information.

Darrell Cochran, a partner at Gordon, Thomas, Honeywell, Malanca, Peterson and Daheim, spoke candidly about the process of taking a case from a failed mediation to trial. In keeping with the “Ski-LE” theme, Mr. Cochran titled his presentation “Avoiding the Yard Sale: The Ungroomed Run from Failed Mediation to Opening Statement.” His presentation addressed the value of Evidence Rule

904 in admitting evidence for trial, the need for a careful analysis of the case history in preparing your witness list, and the power of illustrative exhibits. Mr. Cochran pointed out that simple document pullouts can be very effective techniques to help the judge or jury understand your case. True to his advice, Mr. Cochran’s presentation included visually engaging examples such as aerial photographs and a dramatic case timeline.

Following the afternoon’s presentation, nearly 30 young lawyers made the short walk to Neo’s Wood-Fired Pizza for dinner and socializing. Those who wished to continue the evening met at the Harmon Brewery & Restaurant in revitalized downtown Tacoma.

On Sunday, a small group headed to Crystal Mountain to enjoy the beauty and challenge of skiing in the shadow of Mount Rainier. The hardiest souls headed up near the top of the mountain, while another group enjoyed more gently sloping runs. The group reunited after a hard day for a quick bite and drink at the Snorting Elk Restaurant and Cellar.

This event, the fifth WYLD express, was a success not only in terms of high turnout, but also in providing an opportunity for young lawyers across the state to learn practice tips and network with their peers. This Ski-LE would not have been possible without help from the Pierce County section of the WYLD, especially the help of Heather Young and Michelle Garzon. Noah Davis, president of the WYLD, also provided valuable help.

For those who are interested in helping out with this summer’s WYLD Express, please feel free to attend the Membership Committee meetings. Meetings are held on the third Tuesday of the month at the WSBA from 6 to 7:15 p.m. In addition to planning WYLD Express events, the Membership Committee plans weekly networking events in the Seattle area for young lawyers to get out and get acquainted. Membership in the Young Lawyer Division, as well on the Membership Committee, is free and automatic for new lawyers, and we encourage all who are interested to get involved.

*Ms. Keith is the 2005-2006 chair of the Membership Committee and in private practice in the Seattle area. She can be reached at adrienne.keith@gmail.com.*

## Soliciting Writers, Articles, and Letters



We encourage members of the Washington Young Lawyers Division to submit letters or articles for publication in *De Novo*.

All submissions must contain a daytime telephone number for verification of authorship. Letters and articles may be edited for length and grammar.

Letters and submissions to be included in the next *De Novo* must be received no later than April 15, 2006. The next *De Novo* will be published in June 2006.

Send submissions to:  
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**De Novo Mission Statement**

De Novo is published for the young lawyers of the Washington State Bar Association. Its general mission is to provide a forum for the exchange of ideas, information and commentary, and to encourage discussion amongst the readership regarding the broad experience of young lawyers. De Novo additionally serves as a vehicle to facilitate the dissemination of information regarding member services, public service, programs, and activities of the Young Lawyers Division.

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## Kitsap County CLE — by Jennifer Brugger

The Washington Young Lawyers Division held a CLE in Kitsap County on January 19, 2006. The CLE, entitled “Introduction to the Kitsap County Courthouse,” was a great success. The CLE was geared toward new attorneys and those new to Kitsap County. It was well attended by young lawyers and several more-experienced attorneys. Those in attendance were treated to a panel of excellent speakers. The topics covered included court scheduling, the Clerk’s Office, District Court, mandatory arbitration rules, local court rules, the law library, ethics, and courtroom civility. The speakers were engaging, and there was time at the end of each presentation for questions. The participants learned the inner workings of the Kitsap County Courthouse and now have an advantage when it comes to practicing there. Thanks to all who attended, and stay tuned for other interesting CLEs in Kitsap in the future.

*Ms. Brugger represents the Peninsula District on the Board of Trustees for the WYLD. She is a deputy prosecuting attorney in Kitsap County. She can be reached at [jbrugger@wapa-sep.wa.gov](mailto:jbrugger@wapa-sep.wa.gov).*

## 2006 WYLD Pre-Law Student Leadership Conference

### *Volunteers Needed!*

Attorney volunteers are needed for the 2006 WYLD Pre-Law Student Leadership Conference, scheduled for May 13, 2006, from 10:30 a.m. - 6:00 p.m. at the Yakima Convention Center in Yakima. The conference is free to high school students from around the state and is designed to encourage young people to attend college and consider a career in the legal profession. Attorneys from around the state are encouraged to attend. Please contact the conference chairs for more information.

#### Conference Chairs:

Gloria Ochoa Lawrence, (509) 734-1345 or  
[gloria.lawrence@ochoalawrencelaw.com](mailto:gloria.lawrence@ochoalawrencelaw.com)

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