

## Career Spotlight – Life as In-House Counsel

by Julia Bahner

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For some young lawyers, in-house counsel are our clients; for others, our career aspiration. For the rest of us, in-house counsel represent another one of the endless career paths available to the young lawyer. This article focuses on the role of in-house counsel and is based on interviews with three in-house counsel attorneys in Washington: Matthew J. Wagner of Expedia, Inc., Sherri L. Jefferson of Starbucks Coffee Co., and Jean M. DeFond of Washington Mutual.



Matt Wagner

Matt Wagner graduated from Harvard Law School in 2000 and worked from 2000-2004 in the Technology Business Group at Perkins Coie LLP before joining Expedia, one of the world’s leading online travel companies. Expedia is headquartered in Bellevue and has offices throughout Europe, Australia, and the Pacific Rim. Additionally, Expedia owns a controlling interest in a leading online Chinese travel agency, eLong. Expedia’s in-house legal department has more than doubled in size since Matt came on board in 2004, and currently has 16 attorneys. As senior corporate counsel for Expedia, Matt works on deals and conducts in-house education and outreach activities to his internal clients within Expedia, primarily supporting the company’s North American retail and Asia/Pacific operations. His top three responsibilities are advising his internal business clients, negotiating agreements, and drafting contracts.

There are differences between a law firm associate position and that of in-house counsel. As an associate, Matt used to split his time among many clients; today, his job as in-house counsel means that he has one client (Expedia) and gets to learn its business in depth. Matt also enjoys the fact that being in-house means that he can focus on being a counselor at all stages of a project in order to help grow Expedia’s business. In comparison, outside counsel may frequently be brought in only at the crisis stage, at the end of a deal, or to document a deal once the terms have been negotiated. Matt hires outside counsel at Expedia when looking for special expertise or to do overflow

work. He values responsiveness and efficiency in outside counsel.

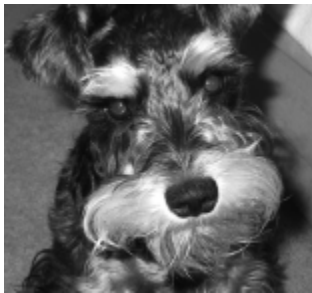
While Matt finds that the in-house lifestyle is still demanding, he believes that not having to bill hours makes things more manageable. Matt also finds being in-house more collaborative than being at a firm. Because each attorney is working for the same client and often on projects that relate to one another, Matt is able to interact with his colleagues much more than at a law firm. Matt’s advice for those looking to go in-house is to first get solid and varied experience at a law firm. New attorneys can get lots of training and supervision while at a firm, while usually there is no time to provide this level of oversight in-house. Often a young in-house lawyer will be working without this “safety-net,” so it is necessary to be comfortable with skills and judgment. For those currently at a firm who are looking for in-house opportunities, Matt advises you to make and maintain excellent relationships with clients. Good attorney-client relationships can easily develop into job opportunities. If you are not working directly with companies that hire in-house counsel, he suggests active networking. Friends, colleagues, and acquaintances can be excellent sources for job referrals. Going in-house is easier for those with transactional experience, but many larger corporations do hire in-house litigation staff. Matt believes that if you focus on becoming a good lawyer first, the opportunities will present themselves to you.

Sherri L. Jefferson (2001 WYLD president) is in-house counsel at Starbucks. She graduated from Tulane Law School in 1994 and moved to Seattle to work at Davis Wright Tremaine LLP in its employment litigation group. She stayed there for over three years and then practiced for another three years at Stoel Rives LLP before moving in-house to Starbucks. Currently Starbucks has approximately 40 in-house attorneys. Sherri believes that one common misperception about in-house attorneys is that they work less than their peers at law firms. Sherri’s work at Starbucks is just as demanding, if not more, than the work she did while in private practice. Addressing employment law issues, Sherri works on all local, state, and federal discrimination and EEOC matters. Every day she must be at the office and accessible to her clients across the country and in Canada. Each day also brings new status reports, developments, and meetings that she must attend. She believes that being in-house allows one to know the client better.

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## Editor's Column

by Shelley A. Ajax



The author's dog, Aly.

There is an art to practicing law with other lawyers — an art concerning congeniality amongst us and professional conduct.

I thank Mark Kuffel for teaching me that within a week of practicing (maybe it was longer, but he deserves the credit). It is impressive to see two attorneys collaborate on a case. It is even more impressive to see it happening daily around you. You want to be a part of it all, but nobody will let you.

The silent but deadly initiation process for young lawyers is overwhelming and often discouraging. It can be like hitting a brick wall when you need the most guidance and advice in your career; you are turned away, treated differently, and resolution of your case is like climbing a prison wall and crawling through barbed wire to make it to the other side. Many of us have been there and are still wading through the experience. Many have yet to get there and are looking upon it with wide-open eyes, wondering. One way or another, we all started there. If you are just entering that arena, put that belt buckle between your teeth and bite down hard (but do not drink any whiskey — you will get through).

Here is an example. Opposing counsel is a seasoned and respected attorney (you know he is old, but you do not care). Opposing counsel has been on this particular docket before that particular judge for years. You do not even know the judge's name until the bailiff makes the announcement. You try to talk to opposing counsel and you get nothing. Every other lawyer in the courtroom is working out their clients' problems but you! Instead, you head directly to argument. Your legs and arms are bleeding from the barbed wire and you hope nobody notices (everyone does).

You are standing before the judge. It is your motion, so you talk first (because you learned that in trial advocacy) and you were sure to say good morning or good afternoon first. You know the law (but you have no idea if you are even standing in the correct position in the courtroom). You are talking... or ranting... or

yelling... or whatever it is you do (other lawyers in the courtroom are already calling you Dennis Miller during your argument and you hear this). Your hands are shaking, your legs are quaking, and you think you have a run in your stockings (and that is really going to kill your case).

The judge is scrupulously (perhaps frantically) looking through the court file ignoring you, trying to figure out what it is that you should be telling him in order to make an informed decision. You are done talking. You sit down. The other attorney starts in, and the judge closes the file and looks up and pays attention to the older more seasoned lawyer and then makes a ruling. No reason to give you the opportunity to respond. You keep your mouth shut. Sound familiar?

It is like college initiation into a fraternity/sorority, except you just paid \$100,000 for a business-sized card with a five-digit number. It is a rite of passage worse than the bar exam experience you went through (and you thought you were done). Hide your frustration and bide your time.

We all just want to get our first trial over with. It has been a year and my good trials keep getting bumped. I just wish the first trial that was going was not a standing issue on new law! Why do all the good cases settle? I could gain some experience from those! I think most of us feel this way, and there is no way to stop the stomach tossing except to go through the trial.

By now you are wondering who the heck I am. Well, I am the associate editor of *De Novo* and I am honored to be here. I am a graduate of Gonzaga School of Law (blah, blah, blah)... I have two dogs and two boys. The dogs are miniature schnauzers (ages one and six). I opened my firm right out of law school, so this article is somewhat nostalgic (it has been a year, feels like 10).

There is still a long way to go before I gain the full rite of passage, and after a year, I both embrace and understand that. Judges have a tremendous job making fast decisions that may affect children, parents, defendants, and the overall value of life for many. Judges are the guardians and I accept that (but sometimes I wish they would crawl the prison fence and cross the barbed wire fence with me). If nothing more, we could all use a reminder of how that feels, and for those starting out — this is normal. If you believe what you are doing and

are honest, trustworthy, reliable, and congenial, you will, with time, make it through the initiation and on to the profession. Just like a good friendship, it takes time to trust, time to care, time to pay attention, and time to succeed.

For the past year, *De Novo* has been fortunate to have a great editor: Jason Vail. Jason has dedicated his legal career to public service. He has worked with Washington's largest legal-aid program, Northwest Justice Project in varying capacities for the past five years. His commitment to the community has been admirable. Jason helped coach the UW Law School team that recently won the national moot court competition hosted by the American Constitutional Society. Jason has also taught courses in legal ethics and legal writing to paralegal students at Highline Community College. I would tell you more about Jason, but he will be reading this and would probably edit out anything I said that would make him blush (so, I am sending this directly to the printer without his edits). Jason has also just been elected to serve the WYLD at-large position on the Board of Governors. The term for the editor position is a year-and-a-half, and Jason will transition out as I transition into the editor position in the future (not yet!). We will miss him and wish him the very best.

Unfortunately, most of our board is aging out or leaving to serve young lawyers in different ways. The more help we can get the better. Please consider spending a little bit of your time on the Editorial Advisory Board and participating in the monthly call-in meetings, sharing your ideas, writing articles, or just giving input. Since Jason will be leaving in the future, we will need your help (but don't tell him that). If nobody steps forward to fill the shoes of the capable Editorial Advisory Board, I will be having that monthly editorial meeting with my two dogs, Romeo and Aly. We will have to switch from pizza to rawhide bones, but what the heck (actually they would prefer pizza). Should be a doggone good publication!

*Shelley A. Ajax is the associate editor of De Novo. Ms. Ajax is the owner of Ajax Law Firm and will be transitioning into the De Novo editor position next year. She can be reached at 509-735-5055, or shelley@ajaxlawfirm.com. All opinions are solely her own and not those of WYLD, the WSBA, or De Novo.*

## President's Column

# Out with the Old, In with the New

by Noah Davis



As September approaches, and as I begin to prepare for the passing of the WYLD gavel to President-elect John Brangwin, I've been enmeshed in that retrospective phase, looking back over the past couple of years and trying

to make sense of my crazy year as president – all the while hoping that I did something right during the term, and that I left the WYLD in better shape than when I found it (undoubtedly the wish and desire of all past prezzes).

During my terms as president, president-elect, and before that, chair of the Membership Committee, I have tried to be as active and involved as I could possibly be, attending nearly every WYLD CLE, happy hour, public-service activity, and committee meeting held. And while it wasn't possible to attend them all (as we surely have a lot going on), I bet I actually came pretty darn close. At first, my goals were simple, from wanting to be in-

involved in the WYLD, to having fun, to meeting other young lawyers, and to trying to give back to the legal and general communities. But, upon becoming president of the WYLD, I picked up a lot of new responsibilities, such as planning, management, budgets, logistics, and agendas for each of these meetings and activities. Ugh. I also noticed that with all of the added duties as president, including all the grand plans that I had (including my "WYLD staff-liaison cringing" idea for the WYLD Olympics), it became even more challenging: to do the things that I really enjoyed doing: just getting out, mixing and mingling!

So, in all of this retrospective insight that I've been engaging, I've come to the obvious conclusion (yes, that education is really paying off) that there are at least two levels to the WYLD: the policy-making level and the activity (or committee) level. With these levels are two corresponding types of involvement.

As a new young lawyer, I jumped in on the activities side, joining the WYLD CLE Committee to help plan a CLE entitled Pre-Trial Practice. From there, I helped plan the WYLD's Bridging the Gap CLE, and after that

went on to chair the Membership Committee, which was a lot of fun. The Membership Committee, although perhaps a bit bland in name, is about the coolest thing around, as its goal is to create social and networking opportunities for our membership. Currently, the Membership Committee, which meets on the third Tuesday of every month, plans weekly social events in and around King County while planning larger social/CLE events at least twice a year in other counties throughout Washington state (including the recent WYLD Young Lawyer Express in Spokane).

Anyone who wants to join the Membership Committee is absolutely welcome and will automatically become a member of that committee. And, by coming to a Membership Committee meeting (which you can also join by phone), you will be instantly plugged into upcoming events and activities. While some of these events are purely social, such as happy hours, some are also great networking opportunities (such as the recent one with the Washington Appraisers Society), and others are heart-warming public service/*pro bono* activities.

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As far as what Sherri looks for in outside counsel, she hires a person, not a firm, and she looks for bright, capable attorneys who are responsive to her time limits and to her legal needs. She especially wants counsel to work in a timely manner and get her drafts of substantive pleadings (which she always reviews) several days in advance of the due date so that she can have time to adequately review them. A draft should also be what outside counsel would consider to be the final product, not a draft that Sherri will have to proofread. She also looks to hire diverse counsel in order to promote diversity in the profession.

Sherri's advice for young lawyers in general is to keep things in perspective and try to maintain a good balance between work and life, something Sherri is still working on herself as she takes the time to spend more time with her friends and family. She also says that you have to learn how to say no to the many people asking you to sit on boards and participate in community events. By realizing that time is limited, you will remember to make time for yourself and those closest to you. Sherri's advice to young lawyers looking to

go in-house is to learn all the basic skills of a good lawyer and counselor in order to make the transition to the bustling in-house position easier. She also finds that to excel as an in-house attorney, one must learn to think practically and like a business person. Finally, if you are not passionate about the company you work for and if you do not enjoy the environment, you will not enjoy your job.

Jean M. DeFond attended law school after working for five years in government jobs in Oregon. Her government experience included some lobbying efforts where Jean learned that she likes being engaged in public policy debates and efforts. After law school, she started her career at the Portland office of Lane Powell PC. She stayed at Lane Powell for 13 years, rising to equity partner. A headhunter then approached Jean to go to work for Washington Mutual as in-house counsel.

Her day-to-day work as in-house counsel requires her to concentrate on one client, but also across many different units within the bank. Jean finds that in-house practice is just as demanding as being in private practice, as it is still deadline-oriented and busy. Jean

agrees that in-house attorneys get a greater depth of practice because they know their clients so well, including the clients' business practices and short and long-term goals. Much of her job involves monitoring outside counsel. When hiring outside counsel, Jean looks for experts in the particular field.

Jean's advice to young lawyers is to develop an expertise after law school that will be valuable to corporations seeking in-house counsel. At the in-house level, the training and mentoring that takes place in private law firms is not as prevalent, so Washington Mutual usually seeks experienced practitioners. Her final word of advice for young lawyers is to keep eyes and ears open and be aware of the danger in being asked to do something that an attorney should not do. She cautions young lawyers to listen to their inner voice on whether something is right or wrong, and to be prepared to stand up for what they believe in and question overall strategy and goals.

*Julia Bahner is a WYLD King Country trustee and can be reached at [julbahner@hotmail.com](mailto:julbahner@hotmail.com).*

# War – What Is It Good For?

by Anna Conley

## *The Scope of the Executive's Power Pursuant to the Authorization of Use of Military Force*

The Bush administration has overstretched the bounds of reasonable interpretation of the Authorization of Use of Military Force passed by Congress in the wake of September 11 and was reined in by the Supreme Court in *Hamdan v. Rumsfeld*, which was decided on June 29, 2006.<sup>1</sup> This article discusses the background of the statute, the Executive's reliance on it for various acts in the past several years, and the federal courts' responses to challenges to the Executive's use of the statute.

### Background

Since September 11, 2001, the Executive has relied on the Authorization of Use of Military Force Joint Resolution ("AUMF") to justify detaining U.S. and foreign citizens, trying non-U.S. citizens before military tribunals, and administering a domestic spying program. The AUMF passed by Congress on September 14, 2001, authorizes the President to "use all necessary and appropriate force against those nations, organizations, or persons he determines planned, authorized, committed, or aided the terrorist attacks that occurred on September 11, 2001, or harbored such organizations or persons, in order to prevent any future acts of international terrorism against the United States . . ."<sup>2</sup> Expedited discussions between Congress and the Executive following September 11, 2001, resulted in minimal legislative history for the AUMF.<sup>3</sup>

### Detention of U.S. Citizens as Enemy Combatants

The first challenges to the Executive's use of the AUMF were *habeas corpus* petitions brought by Jose Padilla and Yaser Hamdi. Both men are U.S. citizens detained as enemy combatants by the U.S. Secretary of Defense; the crucial difference between them is that Hamdi was captured in Afghanistan, and Padilla was captured on U.S. soil at the O'Hare Airport in Chicago.

#### *Yaser Hamdi*

In *Hamdi v. Rumsfeld*, the Fourth Circuit concluded that the Executive could detain Hamdi as an enemy combatant without charging him with a crime. The court also determined that the AUMF was sufficient congressional authorization to satisfy the Non-Detention Act,<sup>4</sup> which mandates that "[n]o citizen shall be imprisoned or otherwise detained by the United States except pursuant to an Act of Congress."<sup>5</sup> The Supreme Court reversed and remanded the Fourth Circuit's holding on due-process grounds, but agreed that the AUMF granted the Executive authority to detain U.S. citizens designated as enemy combatants and captured on the battlefield. The Court reasoned that capture and detention of enemy combatants were "important incidents of war" authorized by the AUMF's language allowing the Executive to use "necessary and appropriate force."<sup>6</sup>

Before the case was re-opened, the Department of Justice signed an agreement with Hamdi releasing him from U.S. custody and transferring him to his home in Saudi Arabia on the condition that he renounce his U.S. citizenship and "abide by strict travel restrictions."<sup>7</sup>

#### *Jose Padilla*

After Padilla resolved jurisdictional issues,<sup>8</sup> the district court in South Carolina held that the Executive did not have constitutional or statutory authority to detain Padilla as an enemy combatant.<sup>9</sup> On appeal, the Fourth Circuit reversed, holding that the Supreme Court's decision

in *Hamdi* applied to Padilla because *Hamdi* did not intend to distinguish between U.S. citizens captured on U.S. soil and those captured on a foreign battlefield.<sup>10</sup>

Padilla appealed to the Supreme Court. Just before the government's response brief was due, the government indicted Padilla, charging him with several crimes, including conspiracy to commit murder and engaging in terrorist acts.<sup>11</sup> The government transferred Padilla to civilian custody, then opposed *certiorari*, arguing that Padilla's transfer rendered his case moot. Padilla argued against mootness because he could be reclassified as an enemy combatant by the Department of Defense ("DOD"). The Supreme Court denied Padilla's petition for *certiorari*, reasoning that because Padilla was in civilian custody, "consideration of what rights he might be able to assert if he were returned to military custody would be hypothetical, and to no effect . . ."<sup>12</sup>

The dissenting justices stated that whether the Executive can "imprison indefinitely a [U.S.] citizen arrested on [U.S.] soil distant from a zone of combat, based on Executive declaration that the citizen was, at the time of his arrest, an 'enemy combatant,'" was not resolved and expressed concern regarding the Executive's ability to reclassify Padilla as an enemy combatant.<sup>13</sup>

### Non-U.S. Citizen Detention and Trial by Military Commission

President Bush issued the Military Order of November 13, 2001—Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism,<sup>14</sup> relying on the Constitution and the AUMF to order detention of non-U.S. citizens associated with or harboring al Qaeda members or other terrorists, and to try them before military commissions. The order described detention and trial by military commission as "necessary" to protect U.S. citizens, to effectively conduct military operations, and to prevent terrorist attacks.<sup>15</sup> In July 2004, the DOD established the Combatant Status Review Tribunal ("Tribunal"), a military commission consisting of three neutral officers, to try detained non-U.S. citizen enemy combatants.<sup>16</sup>

#### *Hamdan v. Rumsfeld*

At issue in *Hamdan v. Rumsfeld*<sup>17</sup> was whether the Executive has statutory authority to try non-U.S. citizens before military tribunals. Salem Ahmed Hamdan is a citizen of Afghanistan captured in Afghanistan in November 2001. Hamdan was detained in Guantanamo Bay until the President determined that "there is reason to believe [Hamdan] was a member of al Qaeda or otherwise involved in terrorism directed against the United States."<sup>18</sup> Hamdan was subsequently designated for trial before the Tribunal and transferred to solitary confinement. Shortly after Hamdan filed a *habeas corpus* petition with the D.C. district court, the government commenced a formal hearing before the Tribunal. The Tribunal affirmed his status as an enemy combatant who either belonged or affiliated with al Qaeda and found that Hamdan required continued detention.

The district court decided that the Tribunal could not try Hamdan unless a competent tribunal determined he was not a prisoner of war,

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## Ethics Corner

by Shelley A. Ajax



In July of 2006, the Washington Supreme Court adopted new Rules of Professional Conduct. The new rules will become effective September 1, 2006. In the past, we have reviewed the current rules, comparing them with the proposed rules. The proposed rules were not adopted entirely without change. This article will focus specifically on RPC 1.6's duty of confidentiality as adopted, the language of the proposed rule, as

well as the prior rule.

There is some general reorganization and re-wording in the proposed rules that will throw the reader at first. In RPC 1.2(c), 1.6(a) and 1.7(b), the term "informed consent" has been inserted. Generally speaking, informed consent is a major concern when there is a former client involved, a conflict, or a prospective client. The term is clearly defined in the terminology section (Rule 1.0) but essentially requires disclosing and explaining facts and circumstances along with advantages and disadvantages to a situation that will enable the client or other person to make an informed decision. This may include advising the client to seek the advice of another attorney, confirmation in writing, or signed consent. The hurdles to reach informed consent in each circumstance vary, but are set forth in each RPC.

Rather than referring solely to the protection of client confidences and secrets, the term "information" is substituted in the proposed rule. According to comment 19, the term "information" extends not only to confidences and secrets, but also to attorney-client privilege. After reviewing all of the proposed changes, the re-wording makes sense and adds to easier reading and understanding of the rules.

There are some substantial additions that have been made with respect to revealing confidential information. The following additions to RPC 1.6 (with the exception of paragraph (b)(1), explained below) reflect that a lawyer "may" reveal confidential information "to the extent the lawyer reasonably believes necessary." This opens the door for those lawyers who have expressed moral dilemmas in the past.

RPC 1.6 (b)(1) as proposed to the Washington Supreme Court allowed a lawyer to reveal information "to prevent reasonably certain death or substantial bodily harm." This addition takes into consideration the value of life and, according to comment 6, the harm must be imminent or there must be a "substantial threat" of harm where the lawyer's disclosure would eliminate or reduce the harm from occurring. This proposed rule was altered by the Washington Supreme Court making it a mandatory rule. Thus, revelation will be required when the rules become effective.

In addition, RPC 1.6(b)(3) as proposed to the Washington Supreme Court allowed a lawyer to reveal certain information "to prevent the client from committing a fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services." Proposed comment 21 explained that when a client abuses the client-attorney relationship, the client essentially forfeits the protection of the attorney-client privilege. A lawyer's right to withdraw under such circumstances continues to exist under RPC 1.16. Also, RPC 1.2(d) requires that a lawyer cannot assist in the furtherance of fraudulent or criminal conduct.

It is important to note that proposed RPC 1.6(b)(3) was a rule of prevention. If the crime had already been committed, this rule would not have appeared to allow discretionary disclosure. According to proposed comment 22, it would be possible that disclosure may be made pursuant to a court order. Thus, the focus of proposed RPC 1.6(b)(3) was one of prevention and urgency.

At the time of this writing, the author understands the Washington Supreme Court did not adopt the proposed RPC 1.6(b)(3) as discussed above. Instead, the Supreme Court adopted the ABA Model Rule, which allows revelation "to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services."

RPC 1.6 (b)(4) allows a lawyer to reveal information "to secure legal advice about the lawyer's compliance with these Rules." It is important to note that any of the above rules can still be violated by revealing too much unnecessary information. According to comment 23, a lawyer "must make every effort practicable to avoid unnecessary disclosure of information relating to a representation . . ." The comment makes mention of *In re Boelter*, 139 Wn.2d 81 (1999), which should be carefully reviewed. One must be cautious not to disclose information to those who do not need to know. Protective orders should be sought to minimize disclosure problems.

RPC 1.6 continues to allow disclosure to prevent a crime from being committed by a client, to comply with a court order, or to establish a defense or respond to allegations in a proceeding involving the representation.

Comments to the proposed rules referred to in this article will be altered to fit changes made to the adopted rules by the Washington Supreme Court. As of this writing, we do not know what new light the new comments will shed on the rules as adopted.

Overall, the additions to RPC 1.6 are positive and create a little more breathing room for attorneys to take discretionary steps to prevent crime or substantial harm to others.

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### 2006 WSBA 50-Year Member Tribute Luncheon, September 29

The 50-Year Member Tribute Luncheon will be held Friday, September 29, at the Hilton Seattle, Sixth Avenue and University Street, Seattle. The reception/registration begins at 11:00 a.m. (no-host bar), and the luncheon/program begins at 12:00 p.m. Registration is \$45 per person. Registrations and payment must be made by September 22. All members of the legal community are invited. To print a registration form, visit [www.wsba.org](http://www.wsba.org).

## 2006 ABA YLD Spring Conference Report

by Mike DeWitt

*(Or, Why I Ended My ABA Holdout)*

I don't know about you, but when I received my complimentary one-year free membership to the ABA Young Lawyers Division upon becoming a lawyer, I did not really think much of it. Like many of you, I did enjoy the monthly newsletters and probably thought about attending a CLE. But when asked to renew my membership for a fee, I declined.

Fortunately, my turn on the WYLD Board of Trustees gave me the opportunity to attend the 2006 ABA Young Lawyers Spring Conference in Portland, Oregon, on May 19 and 20. This was the first ABA conference I had attended, and in fact was the first involvement I had with the ABA at all since my free membership lapsed in 2002. (This does not count the fact that the concise list of most common trial objections found in one of the newsletters was taped to the counsel table at my first trial in 2004). I left Portland so impressed with the program and so excited about the benefits of ABA membership that I joined the ABA the day I got back.

This annual spring conference coincided with the HIV/AIDS Law and Practice Conference. There was a diverse array of programming on issues related to the ongoing global struggle with HIV/AIDS, as well as more general issues dealing with the practice of law and professional development for young lawyers.

The opening session featured an educational – if not sobering – presentation by Ed Thompson, Jr., the Acting Director of the Coordinating Center for Health Promotion in the Centers for Disease Control and Prevention. Afterward, several presentations were offered on a variety of subjects, from advising lawyers from diverse backgrounds on issues related to employment law and handling their own personal adversity in the workplace, to helping young lawyer affiliates improve



*Nike Regional In-house Counsel Peter H. Koehler, Jr., WYLD President Noah Davis, ABA YLD 2005-2006 Litigation Chair Sunil R. Hargani, and King County Trustee Julia A. Bahner pose for a photo after the "Internal Investigations" CLE at the ABA YLD Spring Conference in Portland.*

earnings, and enormous student-loan debt. If you are like me, you too have been looking for some guidance on how best to begin accumulating wealth and have been growing frustrated cobbling together the advice of Suze Orman, the anecdotal advice of your firm's partners, and the occasional urge to "put it all on red." Presenter Thomas Haunty has written a book on this very subject, and had some insightful advice that would benefit any young lawyer.

And all of this was just the first half-day; there simply is not enough space here to do the conference justice. As you can see, the conference offered something for all young lawyers, and perhaps best of all gave insightful presentations on issues you otherwise may not have been aware of. It left no doubt in my mind that it was time to end my ABA holdout. I encourage all young lawyers to look into attending a future ABA conference to see first-hand the career enhancements an ABA membership may offer you.

*Mike DeWitt is a family law attorney in Lacey and is the WYLD Greater Olympia Area Trustee. He can be reached at 360-866-6640 or mikedewittlaw@yahoo.com.*

### 2006 WSBA Annual Awards Dinner and Business Meeting to Be Held September 14

The WSBA Annual Awards Dinner and Business Meeting will be held Thursday, September 14, at the Madison Renaissance Hotel, 515 Madison Street, Seattle. The reception begins at 5:30 p.m. (no-host bar), and the dinner/program begins at 6:30 p.m. Registration is \$75 per person. Reservations and payment must be received no later than September 7, 2006. All members of the legal community are invited to attend. For additional information, visit [www.wsba.org](http://www.wsba.org) or contact the WSBA Service Center at 800-945-WSBA or [questions@wsba.org](mailto:questions@wsba.org).



*WYLD Members at the ABA YLD Dinner Dance in Portland, Oregon.*

and sustain their local chapters, to a session entitled "So You Want to Be a Law Professor" that I decided to attend despite having never thought about that particular career choice before.

There were presentations on employment discrimination and immigration issues confronting those infected with HIV and presentations related to the nuts-and-bolts of practicing law. I was particularly pleased to see a seminar on financial planning aimed specifically at young lawyers. We are a discrete group of professionals with specialized financial circumstances: higher potential earnings than current

## 2006 Bar Leaders Conference and Access to Justice Conference

by Jennifer Brugger

June 9-11, 2006, was a big weekend for the WYLD when the Board of Trustees (“BOT”) attended the Bar Leaders and Access to Justice conferences in Yakima. The weekend kicked off on Friday morning when the WYLD Board of Trustees presented its annual report to the WSBA Board of Governors (“BOG”). WYLD President Noah Davis and President-elect John Brangwin gave a detailed presentation about the programs and services of the WYLD. The BOG commented on how impressed it was with WYLD’s efforts this past year.

The BOG presentation was followed by the Board of Trustees June meeting. The BOT met throughout the afternoon and concluded in time for the members to attend the evening welcoming reception. The reception featured a number of distinguished guests, including Washington State Supreme Court Chief Justice Gerry L. Alexander, WSBA President Brooke Taylor, and ABA President Michael S. Greco, among others. Those who attended were treated to a very entertaining skit highlighting access to justice issues and the need for increased funding for legal aid in Washington.

On Saturday and Sunday there was programming offered at both the Bar Leaders Conference and the Access to Justice Conference. There was a roundtable discussion with members of the Washington State Supreme Court and the WSBA Board of Governors. Topics covered included the independence of the judiciary and a defined right to counsel in certain civil matters. The plenary session included speakers in bar leadership positions and people from access to justice organizations. The presenters led a discussion on the defined right to counsel in civil cases and also provided information on the new State Plan for the Delivery of Civil Legal Aid to Low Income People in Washington State.

American Bar Association President Michael S. Greco was the keynote speaker at the conference luncheon on Saturday. President Greco highlighted several of the projects and initiatives he has worked on throughout his presidency. His inspiring remarks were applauded by those in attendance. A very important award, the WSBA *Pro Bono* Award, was also given during the luncheon to Leonard J. Feldman of Heller Ehrman, LLP.

Programming continued in the afternoon and there was a brief reception in the evening to honor Mr. Greco. Some in attendance then went on a wine tour where a BBQ dinner was served. Others gathered with friends for dinner and socializing.

The conferences concluded on Sunday with several outstanding presentations. One session of particular interest featured speakers from the WSBA Office of Disciplinary Counsel, Sachia Stonefeld Powell and Nancy Bickford Miller, talking about ethical and disciplinary problems and the assistance the WSBA has to offer. It was interesting to hear how to avoid common ethical pitfalls for which lawyers can be disciplined.

There was an Access to Justice Leadership Group Meeting where the new State Plan for the Delivery of Legal Aid was discussed in greater detail. The group included those who had worked on the plan for quite some time and they tried to explain what was expected of legal aid providers in implementing the plan.

All in all, the Bar Leaders and Access to Justice conferences gave young lawyers an opportunity to talk to various people in bar leadership positions and those involved in providing legal aid services. Along with the educational opportunities, there was time to have fun as well.

Thanks to WYLD Trustee Michael Talbott, our local host in Yakima, for planning social activities for our free time.

Overall, the conferences were educational and inspiring and there were opportunities to learn a great deal about cutting edge issues affecting the legal system today.

*Jennifer Brugger is a deputy prosecuting attorney in Kitsap County and the WYLD Peninsula District Trustee. She can be reached at jbrugger@wapa-sep.wa.gov.*

### 2006 Trial Advocacy Program October 27-28 & November 10-11, 2006

The Trial Advocacy Program (“TAP”) offers members of the Washington Young Lawyers Division an opportunity to improve their litigation skills in both the civil and criminal justice fields and to acquire jury trial experience. The TAP provides a unique opportunity to interact with, and learn from, more experienced practitioners and to network with other young lawyers and judges.

The TAP is an intensive two-weekend program. The first weekend is composed of presentations by accomplished trial attorneys, judges, and legal consultants on critical phases of trial preparation and practice, including depositions, discovery, *voir dire*, and opening statements. Please refer to the registration materials for a complete list of speakers and presentation topics.

Mock jury trials will be held the second weekend. All participants will be paired with another attorney and assigned as either plaintiff’s or defendant’s counsel. You and your partner will prepare your case using the assigned trial materials and the information you learned during the lectures, then present the case in a one-day trial before a judge and jury. Following the verdict, participants will receive constructive criticism and helpful insights from the judge and members of the jury.

This program has been approved for 27.25 CLE credits, including one ethics credit.

#### Lecture Weekend – October 27 & 28, 8:00 am to 5:00 pm

Lynnwood Convention Center  
2711 196th St. SW  
Lynnwood, WA 98036

#### Mock Jury Trial Weekend – November 10 & 11, 8:00 am to 4:00 pm

King County Courthouse  
516 3rd Avenue  
Seattle, WA 98104

Registration by August 18: \$199

Registration by September 15: \$299

To print the registration form, visit [www.wsba.org/lawyers/groups/wyld](http://www.wsba.org/lawyers/groups/wyld).

## Pro Bono/Public Service Committee Update

The YLD Pro Bono/Public Service Committee has had an extremely eventful year thus far and it has exciting plans for the coming months. In the beginning of March, the committee kicked off its year by staging another successful immigration law clinic. The clinic, which was held in partnership with our good friends at the Seattle University Law School's Access to Justice Institute, helped pair up to 60 individuals and families with experienced immigration law attorneys. We plan on scheduling another immigration clinic for this fall.

Next, in May and June, approximately 20 young lawyers went out to several Seattle high schools and presented the ABA's *We the Jury* program. The program gave the attorneys an opportunity to teach students about the jury system, and the students had the opportunity to participate as jurors in mock trials. From all indications, the attorneys enjoyed the experience, and the teachers and students were very appreciative of the fact that the attorneys were willing to volunteer their time and expertise.

Looking forward, the committee is planning on implementing a new program called Wills for Heroes that is being spearheaded by young lawyers Jenni Frere Volk and Ford Clary. As described in greater detail below, the goal of Wills for Heroes is to allow attorneys the opportunity to give thanks to police officers and firefighters by assisting them with their estate planning needs:

### The Newest YLD Public Service Opportunity: "WILLS FOR HEROES"

Interested in a way you can help those who help others? The Wills for Heroes program is designed to provide free estate planning services to "first responders" in Washington, including fire fighters and police officers. Volunteer attorneys are needed to help "first responders" to establish a basic estate plan.

The program was inspired by the events of 9/11 and has been successful in South Carolina, Arizona, and elsewhere. The program will begin in the Seattle area, and there are plans to expand the program into all counties of Washington in the near future.

The first clinic will be held in Seattle for the Seattle Fire Department on Saturday, September 9, 2006. A second clinic is scheduled for October 7, 2006, for the Seattle Police Department.

The committee is very excited about this opportunity and strongly encourages young lawyers with estate planning experience to offer their time and skill to this worthy cause. If you are interested in volunteering with Wills for Heroes, please contact Jenni Frere Volk ([jenni@volklawfirm.com](mailto:jenni@volklawfirm.com)) or Ford Clary ([fordclary@hotmail.com](mailto:fordclary@hotmail.com)).

We on the committee are truly grateful for all of the support that we have received from young lawyers throughout the year, and we hope to see many more of you at our future projects and programs. If you have any interest in participating in any of the events that we have described in this update or would like to suggest new programs for the committee to consider, please do not hesitate to contact committee co-chairs Erin Hall ([Erin@aoki-sakamoto.com](mailto:Erin@aoki-sakamoto.com)) and David East ([DEast@mcnaul.com](mailto:DEast@mcnaul.com)).

## Pre-Law Student Leadership Conference

On May 13, 2006, the WYLD sponsored its eleventh Pre-Law Student Leadership Conference in Yakima at the Yakima Convention Center. The Conference is designed to encourage at-risk and minority high school students to pursue higher education, to consider careers in law, and to take active leadership roles in their communities. Volunteer attorneys facilitated workshops where students discussed criminal law, immigration issues, freedom of speech in schools, and career choices and opportunities. In addition, the keynote speaker at the conference luncheon was former WYLD President J.D. Smith. There was no cost to students, and although the conference was open to youth from throughout the state, most of the attendees were of minority backgrounds and hailed from central and rural areas of Washington. In all, approximately 60 students and 20 attorney volunteers participated.

## Greater Access and Assistance Project Update

by Jennifer Brugger

Work is underway on the expansion of the Greater Access and Assistance Project (GAAP). The GAAP provides civil legal assistance to people who are not financially eligible for *pro bono* legal assistance or staffed legal-aid programs but cannot afford to hire a private attorney for representation. The program is overseen by a joint committee consisting of members of the WYLD and liaisons from the Access to Justice Board. This committee is working with people from around the state to expand the GAAP program to other counties. The program is now up and running in King County and has been running in Spokane County for several years. Snohomish County has recruited attorneys and should be taking GAAP referrals in the near future. There are also plans to expand GAAP to Kitsap and Whatcom counties.

The WYLD applied for an ABA/YLD public-service subgrant to secure funding for expansion efforts. The WYLD is pleased to announce the award of a \$2,000 subgrant to expand GAAP in Snohomish and Kitsap counties. Additionally, a funding request (in addition to the WYLD GAAP budget request) has been submitted to the WSBA Board of Governors for GAAP. Part of the request is for a feasibility study to evaluate the possibility of a centralized statewide GAAP program. The other part will provide funding to existing programs and those that are just getting started. The committee is very optimistic in light of increasing interest from the Board of Governors. The program is very worthwhile and will help to serve people who might otherwise fall through the "gap."

For more information, contact Rachele Anderson at [rachele@mail.asisna.com](mailto:rachele@mail.asisna.com) or Jennifer Brugger at [jbrugger@wapa-sep.wa.gov](mailto:jbrugger@wapa-sep.wa.gov).

*Jennifer Brugger is a deputy prosecuting attorney in Kitsap County and the WYLD Peninsula District Trustee. She can be reached at [jbrugger@wapa-sep.wa.gov](mailto:jbrugger@wapa-sep.wa.gov).*

*Out with the Old, In with the New from page 3*

The Membership Committee also acts as a gateway to involvement in other WYLD committees, such as the Committee for Diversity, the Public Service/Pro Bono Committee, and the CLE Committee. And, if you're interested in leadership opportunities within the WYLD, especially committee chair positions, the Membership Committee affords you a wonderful opportunity to meet WYLD leadership and to work your way into a leadership role.

Really, with this committee the sky is the limit, but it just needs you, and we try to implement just about any program or idea that our members propose and which fits within our WYLD mandate. I've also met some of my best friends through the Membership Committee, friends with whom I've been honored to be a groomsman for and even traveled to Cambodia with. So you should really consider coming out, joining one of these meetings, and getting involved in the WYLD. I know you won't be disappointed.

On the other side of things lie the policy-makers – this is our WYLD Board of Trustees, composed of the president (myself), a president-elect, seventeen trustees representing twelve geographic districts (and all three law schools), two WYLD BOG liaisons, and our WSBA staff liaison. Names and contact information for these individuals can be found on the back page of every issue of *De Novo*. This eclectic group meets approximately seven times during the year (six times in person) at sites all across Washington state with the purpose of setting and implementing the WYLD's goals for the year and ensuring that the WYLD's committees act within the WYLD mandate to provide diverse and appealing educational, social, and public-service programming that benefits and attracts all young lawyers, including law students. During these meetings, which are open to the public, the Board meets to discuss how our programming is living up to expectations and how it can achieve even better results by becoming more relevant to the WYLD constituency. The Board considers such issues as CLE rules affecting new admittees, the legal technician rule, law school debt, educational programming, community service, increasing and promoting diversity, and developing ABA/YLD relations.

Committee chairs serve one-year terms at the pleasure of the president. With the exception of the law-student trustees (who also serve one year), the trustees are elected by their constituencies (from each district they represent) to three-year terms and are committed to representing their respective districts and the WYLD as a whole. Our 2005-2006 trustees have also been active in working with (and, in some cases, creating) local young lawyer divisions or sections within their districts and in helping the state WYLD connect with lawyers in their region. During the past year, we have seen the rise of local young lawyer sections in Clark County (Chris Veley), Kitsap County (Jennifer Brugger), Tri-Cities (Toni Meecham), Michael Talbott (Yakima), and Amy Robinson (Bellingham). We have also seen other Trustees continue their wonderful involvement in the local young lawyer divisions of their districts, including Julia Bahner (King County), Rachelle Anderson (Spokane), Kari Petrasek (Snohomish), and Heather Young (Tacoma/Pierce County). Our trustees are also incredibly active in our WYLD programming, including Rachelle Anderson, Jennifer Brugger and Kari Petrasek's work with GAAP (Greater Access and Assistance Program, which matches low income clients with attorneys extending reduced fees), Julia Bahner with the Editorial Advisory Board (*De Novo* committee), Mark O'Halloran with the ABA and Public Service/Pro Bono Committee, Pallavi Mehta Wahi with the Committee for Diversity, and Michael Talbott with the Pre-Law Conference.

With a budget of more than \$100,000, the WYLD has great capacity to service our young lawyer and law student corps and to meet your varying interests and needs – but it also needs to hear your voice in order to implement programming which best fits your needs.

With two different levels of involvement (the committee/activity level and the Board) and more than 25 programs taking place throughout the state in conjunction with the work of a dozen committees, there are so many opportunities for you to be involved, to have fun, to meet other young lawyers and law students, and, in some cases, to help set the policy for the WYLD. But you have to take that first step: to come out and to be involved.

While I may be stepping down as president, I will still be active in both the WYLD and the ABA/YLD and will seek to continue to serve the interests of the WYLD by inviting and encouraging more and more young lawyers into public service and committee involvement.

And I am not alone in this commitment, as in addition to the Board of Trustees actively seeking your input and your voice, our dedicated group of committee chairs also seek your ideas and activism. These committee chairs, whom I warmly thank for their participation and devotion over the past year, are listed on the back page of every issue of *De Novo*.

In closing, I'd also like to send out a very special thank you to: Dubs Herschlip, Allison Williams, Julia Bahner, Chris Veley, Michael Talbott, Amy Robinson, Pallavi Mehta Wahi, Governor Katie O'Sullivan, Governor Eron Berg, Governor Sal Mungia, President Brooke Taylor, President-elect Ellen Conedera Dial, our WYLD Board of Trustees, the WSBA Board of Governors, to our outgoing trustees (Heather Young, Julia Bahner, Jennifer Brugger, and Mark O'Halloran), and our very own Amy O'Donnell (WSBA staff liaison). I'd also like to thank the minority/specialty bar association presidents, many of whom are young lawyers and wonderful friends of mine, and with whom I anticipate working closely during the next year as the WYLD seeks to ensure that diversity is incorporated into its policymaking and programming.

I'd also like to congratulate Mark O'Halloran (as WYLD 2006-2007 President-elect) and our new (incoming) WYLD trustees.

While I certainly did not accomplish everything that I set out to this year, I tried my best to be attuned to the needs of all young lawyers and to be available and receptive. Although the year was not without its ups and downs and bumps and bruises, I gave the year and the WYLD all the heart and effort I could, and I do firmly believe that I have left the Young Lawyers Division in better shape than I found it.

And I would hope that you agree.

Please contact Amy O'Donnell at [amy@wsba.org](mailto:amy@wsba.org) and ask to be added to one of our list serves (such as the Membership list serve to stay abreast of fun WYLD events), or go to [www.wsba.org/lawyers/groups/wyld](http://www.wsba.org/lawyers/groups/wyld). But whatever you do, please consider coming out and joining one of our meetings, as I would like to personally greet you.

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).

*Noah Davis is the 2005-2006 WYLD president and managing member of In Pacta PLLC. He can be reached at [nd@inpacta.com](mailto:nd@inpacta.com). His term as WYLD president runs through September 30, 2006.*

## War – What is it Good For? from page 4

and enjoined further military tribunal proceedings against him.<sup>19</sup> The government appealed to the D.C. Circuit Court, which held that the AUMF constituted sufficient statutory authority to allow the President to try Hamdan before the Tribunal.<sup>20</sup>

Hamdan appealed to the U.S. Supreme Court, which held that the AUMF did not authorize the Executive to create military commissions outside the bounds of previously existing U.S. and international law, the Uniform Code of Military Justice (“UCMJ”)<sup>21</sup> and the Geneva Convention (III) Relative to the Treatment of Prisoners of War,<sup>22</sup> respectively. The Court rejected the government’s argument that the AUMF was a specific congressional authorization authorizing the commissions, reasoning that “there is nothing in the text or legislative history of the AUMF even hinting that Congress intended to expand or alter the authorization set forth in the UCMJ.”<sup>23</sup> Ultimately, the Court decided that the lack of due process afforded Hamdan before the Tribunal violated U.S. and international law by substantially deviating from the court-martial process without justification, and that the Tribunal wrongfully tried Hamdan for conspiracy, an offense outside its jurisdiction.

### Conclusion

The AUMF was passed quickly and outside normal legislative processes in the wake of September 11, 2001 to allow the U.S. to act immediately against terrorism, and not to give the Executive an indefinite “blank check.” The Fourth Circuit’s decision in *Padilla* reaches far beyond a reasonable reading of the statute. Although the Supreme Court will most likely not have an opportunity to determine the merits of *Padilla*’s claims, its recent decision in *Hamdan* drew much needed boundaries on the Executive’s reliance on the AUMF. Despite *Hamdan*, the Executive’s reliance on the AUMF in *Padilla* begs the question – if the AUMF authorizes the Executive to indefinitely detain

a U.S. citizen captured on U.S. soil without charging him, then what action by the Executive is not permissible under the AUMF?

*Anna Conley is a contract attorney in Seattle and will be attending McGill University’s International Law LLM program in August in Montreal. She can be reached at conleyanna@yahoo.com. All opinions are solely her own and not those of WYLD, the WSBA, or De Novo.*

- 1 Slip Op, No. 05-184 (Decided June 29, 2006).
- 2 Pub. L. 107-243, 116 Stat. 1498 (2002).
- 3 CRS Report RS22357, [AUMF] in Response to the 9/11 Attacks (P.L. 107-40): Legislative History, p. 2.
- 4 28 U.S.C. §4001(a).
- 5 *Hamdi v. Rumsfeld*, 316 F.3d 450 (4th Cir. 2003).
- 6 542 U. S. 507, 518 (2004).
- 7 Press Release, U.S. Department of Justice (“DOJ”), Statement of Mark Corallo, Director of Public Affairs, Regarding Yaser Hamdi, (September 22, 2004).
- 8 See 542 U.S. 426 (2004).
- 9 *Padilla v. Hanft*, 389 F. Supp. 2d 678 (D.C.S.C. 2005).
- 10 *Padilla v. Hanft*, 423 F.3d 386 (4th Cir. 2005).
- 11 *U.S. v. Hassoun, et. al*, Case No. 04-60001-CR-Cooke, (S.D. Fl.).
- 12 Order and Concurring Opinion, *Padilla v. Hanft*, No. 05-533 (April 3, 2006).
- 13 Dissenting Opinion, *Padilla v. Hanft*, No. 05-533 (April 3, 2006).
- 14 Military Order of November 13, 2001—Detention, Treatment, and Trial of Certain Non-Citizens in the War Against Terrorism, 66 Fed. Reg. 57,831-57,836 (Nov. 16, 2001).
- 15 *Id.*, §1(e).
- 16 Press Release, U.S. Department of Defense, Combatant Status Review Tribunal Order Issued, (July 7, 2004).
- 17 415 F.3d 33, 35 (D.D.C. 2005).
- 18 *Id.* at 35.
- 19 *Id.*
- 20 415 F.3d 33 (D.C. Cir. 2005).
- 21 28 U.S.C. §800, et seq.
- 22 August 12, 1949. [1955] 6 U.S.T. 3316, T.I.A.S. No. 3364.
- 23 Slip op. No. 05-184, Opinion of Court, p. 30.

## Practice Conditions Forum 2006

This year’s Practice Conditions Forum was a great success. The Forum is held every other year and addresses issues that young lawyers often face as they build their practice. The Forum also gives attorneys tools for balancing their personal and professional lives.

Traditionally, the Forum is held at a unique venue. The year’s Forum was in the McCurdy Gallery of Seattle’s Museum of History and Industry. With historic photographs lining the walls, participants heard from a variety of speakers. Ann Guinn, a law firm management consultant, gave tips for building relationships with staff and clients. Joan Tierney of Seattle University Career Services, attorney Dubs Herschlip, and Dr. Rebecca Nerison of the WSBA Lawyers Assistance Program explained the importance of networking and gave tips and strategies for networking successfully. Attorneys Jason T. Vail, Stephen King, and Wendy Wall discussed access to justice issues, the importance of *pro bono* work, and described their own experiences assisting low-income clients. Finally, King County Superior Court Judges Michael Trickey and Catherine Shaffer discussed courtroom etiquette and the importance of civility and professionalism.

Many thanks to our presenters, whose engaging and thought-provoking presentations made this year’s Forum both interesting and enlightening. Thanks also to the Practice Conditions Forum Committee for your ideas and efforts over the last few months as we put the Forum together.

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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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*Presented by the  
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YOUNG LAWYERS DIVISION

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