

Inter Alia

Among Other Things

Winter 2018

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Welcome to the first edition of *Inter Alia* for the 2018-2019 bar year. As chair of the Young Lawyers Section (YLS), I am excited for the year ahead. I am particularly looking forward to events and programs that will be useful to members of the bar and beneficial to members of the public.

With more than 8,000 members, YLS is the largest section of the State Bar of Michigan. While much of our section is comprised of “young” lawyers (those between the ages of 27 and 36), nearly 15 percent of our membership falls outside of that age range, and into the category of having practiced law for less than five years. I have heard from many of the older recently admitted attorneys that the name “Young Lawyers Section” characterizes the section by youth rather than each member’s relatively new admission to the law as a profession. I agree that the section should be titled in a way that is more accurate and less exclusionary. Therefore, I’ve appointed a committee to review our current bylaws, which have not been updated since 2011.

This is just one part of what I hope will be a transformative year. Please feel free to contact me to share ideas or provide feedback. It is my honor to serve as chair and I aim to be accessible and helpful.

Sincerely,

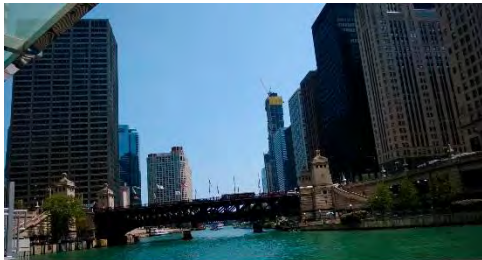
Kara

Service: An Ongoing Practice in the Legal Profession

By Kristina Bilowus

“The only ones among you who will be really happy are those who have sought and found how to serve... The purpose of human life is to serve and to show compassion and the will to help others.” —Albert Schweitzer

The legal profession is comprised of many moving parts and encompasses a wide variety of career paths. Each attorney comes from a different background, individualized path, and brings a unique perspective. Yet a common denominator in the field is the element of service, which weaves its way through our profession.



Throughout the 2018 ABA Annual Meeting, held in Chicago, Illinois, the theme was prevalent. As a Michigan delegate to the Young Law-

yers Division (YLD), I was fortunate to participate in the ABA YLD Assembly, attend informative lectures, enjoy the Fellows Gala, and meet many amazing individuals. Perhaps the most inspiring aspect was the many accomplishments of the year and initiatives for the upcoming season, all of which were tied to a form of giving back to the legal community and community at large.

Beginning with the plenary session, attorney Brian Cuban spoke about overcoming addiction and the importance of good emotional, mental, and physical health in the legal profession. He urged practitioners to assist one another and to utilize state and bar association programs that offer assistance for substance-abuse recovery.

The ABA YLD also stresses the importance of health and wellness with a yearlong initiative focused on mental health, fitness, nutrition, and sleep, recognizing the importance of health for young lawyers. By ascribing value and emphasizing a wide spectrum of good health, tools are provided for those who need them and to reinforce established healthy habits.

The theme of support continued through the YLD Assembly. Before passing the gavel to Tommy Preston, Dana Hrelc provided her report as chair. The report covered disaster legal service outreach to so many areas affected by natural disasters: Florida, Texas, Puerto Rico, the Virgin Islands, Texas, and Alaska, to name a few. The ABA YLD, partnering with Federal Emergency Management Agency (FEMA), was hands-

on, providing legal and community service to residents, sometimes for individuals who lost everything.

Another program, Home Safe Home, is a relatively new project that educates young lawyers on home violence and encourages them to become



involved in their local communities. Hoping to “facilitate effective advocacy on both a local and national level,” the YLS will showcase at least one educational program and one community event at each of the quarterly conferences. In addition to the educational and outreach component, the YLD is actively involved with drafting a resolution to present to the ABA House of Delegates in support of federal and state legislation aimed at addressing home violence.

Other efforts of outreach of the ABA YLD and its many members are diversity inclusion, expansion of dialogue and collaboration between law students and attorneys, and creating better access to education. In each of these opportunities, the young lawyers of the ABA create a pipeline of engagement with the respective communities they serve and relevant ways of helping others.

Looking to the year ahead, other opportunities to advance and complement the profession are being rolled out, while maintaining the focus and momentum of the above-referenced programs.

The Men of Color Initiative will serve as a resource for men of color during law school and the first year of practice, to empower them to become leaders in the legal profession. Furthermore, this task force will facilitate an intergenerational support system and encourages civic involvement.

In a similar fashion the Women in the Profession Committee is organizing the “No Limits” campaign, which focuses on the advancement of women in the legal field. Looking to create awareness and opportunity for growth at both the regional and national level, the program focuses on the development

of women in the legal field, tackling outstanding issues, and strengthening relationships.

Another opportunity concerns innovation and the advancement of the legal profession with technology. The Modernizing Lawyer Regulation will consist of the ABA YLD working with the ABA Center for Innovation and other entities to accelerate innovation in the legal profession. Innovation will improve the way lawyers do our jobs, increasing effective, efficient, modern, and affordable legal services. This task force is dedicated to exploring what regulations already exist in the profession and what changes are needed to accelerate innovation and reduce burden on lawyers.

The examples above are not an exhaustive list but rather highlight the commitment to service and addressing contemporary concerns. The opportunities do not solely advance the aims of law or the profession but are dedicated to the needs of society.

For a young attorney the demands of practice, long hours, impossible deadlines, and the need to successfully establish oneself as a professional are necessary. Yet, the navigation of a

legal career cannot be done in a vacuum. The resolve to help others, maintain healthy lifestyles, and be engaged in the surrounding community help develop a well-rounded lawyer. The ABA Annual Meeting provided a great occasion to reflect and better learn how the legal profession is constantly engaged in service.



Men of Color Project—Kickoff

By Jerome Crawford

The current chair of the ABA Young Lawyers Division, Tommy Preston, envisioned the Men of Color Project (“MoCP”) with one simple, yet critical, goal in mind: *Create significant change for men of color in the law.* With the support of Walmart as a primary sponsor, the ABA YLD officially launched MoCP this bar year, culminating in a kickoff event at the Fall Conference held in conjunction with the GP/Solo Division in Charleston, South Carolina.



Generally speaking, MoCP is an exciting initiative that facilitates intergenerational support and encourages community service and civic engagement among men of color in the legal profession. This project serves as a resource to forge a dynamic brotherhood for men of color while they are in law school and in their formative early years as lawyers. The project helps to provide mentorship, guidance to sponsorship, and community support to give men of color the resources they need to grow and prosper in the law. More specifically, MoCP was founded on three main pillars: (1) Vision Development & Execution; (2) Sponsorship & Mentoring; and (3) Mental Health & Wellness—which was the topic for the kickoff program, entitled “Without Your Health You Have Nothing: A Healthy Mind, Body, and Soul.”

As part of this inaugural event, MoCP highlighted that, in general, far too often attorneys neglect their own well-being for a presumed “greater good,” noting that this object they have fixated their eyes on and sacrifice themselves for pales in comparison to their health. While the concept of lawyers overlooking their health is a widespread issue, it goes further: un- or mis-diagnosed illness in communities of color, largely because attorneys of color fail to self identify or speak up when they need help. The aim of the event was to explore this deep-seated problem and offer solutions under the premise that a healthy mental, physical and emotional state is essential to enjoy the fruits of any personal or professional success.

Continued on next page

Aiding in the accomplishment of the program's goals was a leading scholar and local authority on minority health matters, Dr. Chanita Hughes-Halbert. Following a brief lunch, the discussion commenced with a broad overview of health statistics related to practicing lawyers. Dr. Hughes-Halbert then drilled down to pinpoint how lawyers of color may be disproportionately affected by daily stressors and the devastating impact that can occur by continually failing to address them. At various points, she invited the participants to share strategies on how they cope to find their own peace and solace.

As a man of color practicing law, I was excited to see the MoCP not only brought to life as a leading initiative, but so heavily supported by the ABA. The issues are real, tangible and concrete. I feel them every day, so having the opportunity to break them down on a larger scale was invaluable. And

interestingly, although the event was geared toward minority men, I found it quite insightful that the audience in attendance was incredibly diverse; from women of all ethnicities to Caucasian men to a female moderator leading, this mixed crowd filled the room and offered their comments to foster an inclusive, healthy, and interactive discourse. Overall, the program received positive feedback and attendees spoke highly of both the content and collaboration.

In today's society, one where free thinking is welcomed and celebrated in a variety of forums, perhaps the most salient step is to begin the conversation. I can confidently say that MoCP hit its target directly in the center of the bullseye with this kickoff program, and hopefully will yield similar success with the project at-large. Now the duty is on all of us to keep the discussion going, especially within our local communities.

Bar Service Pays Dividends

By Samantha J. Orvis

Several years ago I was assigned a mentor by the Women's Bar Association mentoring program, and I was very fortunate to have been paired with State Bar President-Elect Julie Fershtman, who became the State Bar of Michigan's 77th president. Only a handful of women had served as State Bar president. Julie had been dedicating her time to bar service for many years and encouraged me to get involved with local organizations and the State Bar of Michigan. I was like a sponge—an overly eager new attorney readily chasing any and all opportunities to get involved, absorbing information—especially when it came from someone for whom I had tremendous respect. Since that time, I have consistently encouraged others to do the same.

Serving on the State Bar of Michigan Young Lawyers Section council for several years, most recently as its section treasurer, has been hands down one of the most rewarding ways I have spent my time outside of the office. We are given tremendous opportunities to put on educational programming and other events to benefit our young(ish) lawyer section membership, and try to find ways to serve the public through our endeavors as well. This continues to be a truly fulfilling experience.

Having served for a short period on the State Bar of Michigan's Representative Assembly in past years, I had an opportunity to learn the nuances involved in the policymaking side of the State Bar. It was a genuinely interesting experience and offered a unique perspective to a young attorney. The Representative Assembly was created by the Supreme Court at the request of the Board of Commissioners back in the early

1970s. The purpose was to allow an increased number of bar members to actively participate in policy making for the State Bar. Serving as a member of the Representative Assembly offers young attorneys an opportunity to get to know others outside of their districts, local communities, and practice areas.

Without formally serving as a council member, district representative, or as a member of a board, there are many ways that young attorneys can serve and use their knowledge and expertise to give back. The State Bar of Michigan has an annual call for volunteers, where bar members are given an opportunity to choose service on a committee that interests them. Young lawyers can seek to participate in other ways, such as serving on local and affinity bar association committees.

Like many of you, I'm sure, I thought there was no way I would be able to find the time to continue my service once other responsibilities (read billable hours and crying babies) were competing for it. What's that saying? "The law is a jealous mistress." I have found in my years of practice that is very true. However, I will leave you with this: despite the effort and energy required to become and stay active with various local, affinity, and state bar organizations, the reward has been tenfold. I have met many other attorneys I can call on as friends, who will lend an ear, offer advice, and who can share in the many struggles that I face each and every day as a young attorney, trying to build my own reputation and make a name for myself in this changing legal landscape. I encourage you all to go out and get more involved in whatever way that you can!

Are You Ready For Some Football?

By James A. Johnson ©2018

Every evening we seat ourselves in front of the television glancing at the headlines in the newspaper and then turn quickly to the sports page. After that, we grab the remote and click on ESPN, Fox Sports Live, ESPN Classics, ESPN Sports Center, DirectTV or Xfinity. If it is a Sunday, Monday or Thursday night in September, October, or November there is a game of controlled violence, called football. We read, discuss, view and even vociferously argue sport in America. Most of us perform our jobs in a perfunctory manner, but when it comes time for sports, our enthusiasm reaches a fervor level.

The 2018 Super Bowl is over and fans of the New England Patriots are hurt and somewhat injured by the loss. Now owners, players, coaches and team physicians can focus on real injuries, known as concussions. *Concussions, also known as traumatic brain injuries, occur when your brain violently impacts the inside of your skull.* Concussions can permanently damage your brain's ability to think or work. These injuries lead to tort claims and product liability lawsuits against the NFL, high schools, college teams, helmet manufacturers, and others involved in the game of football.

Football

Are you ready for some football? This is the rhetorical question every September and at the Super Bowl. Well, yes and no. This controlled violence is still violence, engendering results like retired players who can't get out of bed without help, migraine headaches, quarterbacks and linemen who can't raise their arms or tie their shoes. This game has caused suicides, namely Aaron Hernandez, Jovan Belcher, Junior Seau, O.J. Murdock, Kurt Crain, Mike Current, Dave Duerson and Ray Easterling. There was an avalanche of litigation against the



NFL, NFL Properties, Riddell Sports Group and others. Approximately 2,500 former players and surviving family members sued the NFL for allegedly distorting and hiding data about concussions. On April 15, 2013, a Denver, Colorado jury found Riddell Inc., liable for failing to warn about concussion dangers. The jury awarded \$11.5 million to a Rhett Ridolfi, a high school student, and found Riddell 27 percent at fault. Ridolfi, a former Colorado high school football player, suffered serious brain injuries and partial paralysis. The jury assessed \$3.1 million in damages against Riddell.

In 2010 the NFL gave Boston University's Center for the Study of Traumatic Encephalopathy \$1 million to study the brains of 60 deceased football players.¹ Many showed signs of chronic traumatic encephalopathy (CTE). CTE is a neurodegenerative disease caused by repeated blows to the head. The symptoms of CTE are slurred speech, headaches, psychosis and depression. On December 3, 2012, an additional study from Boston University detailed 33 cases of chronic traumatic encephalopathy (CTE) in deceased ex-NFL players. I hope this article will direct the moral compass of the NFL, NFLPA, owners, coaches, general managers and players to action.

National Center for Injury Prevention

According to the National Center for Injury Prevention, it is estimated that as many as 47 percent of all high school football players suffer a concussion each year. Football players who suffer multiple concussions are at risk of suffering permanent brain damage. A few years ago, not one state required that high school and middle school athletes who suffered concussion symptoms receive medical clearance to return to play. According to USA Football, all 50 states now have some form of student-athlete concussion law in place.²

One of the purposes of this article is to inform coaches, players, parents, athletic directors and general counsel of the seriousness of the risks of concussions to young people whose brains have not yet fully developed. Every concussion is a brain injury. The effects of this damage range from behavioral and emotional disorders to full body paralysis.

An excellent resource for comprehensive facts and laws covering youth sports is Law Atlas—The Policy Surveillance Portal; Choose a topic; Youth Sports Traumatic Brain Injury Map Laws; Injury and Violence Prevention. It covers such information as specifying requirements when an athlete may return to play and requiring distribution of some form of TBI/concussion sheet. For example, it states:

“Every year as many as 300,000 young people suffer con-

cussions or traumatic brain injuries (TBIs), from playing sports. These injuries can have serious and long-term effects, and all states have adopted laws aimed at reducing harm for youth sports TBIs occurring at scholastic activities. This map identifies and displays key features of such laws across all 50 states and the District of Columbia and over time, from 2009 to 2017.”³

Litigation

The power and tension between intercollegiate athletics and the university has escalated. Football and basketball coaches who are successful often overshadow the institution itself. Money is power. These coaches are deities on their campuses and in their respective states. The revenue stream from sports often drives university decision making and conflicts with the values of the university. University administrators must strike a delicate balance and enforce educational values and at the same time reward winning athletic programs. This balance requires a tightening of the reins on coaches and requiring in their contracts immediate reporting and action in handling allegations of wrongdoing and crimes. Case in point is the Penn State situation. But, I suspect there are other athletic programs with serious problems that have not yet surfaced. A reassessment is in order with new rules to keep coaches’ input at a minimum in admission policies, discipline, and other areas that are purely university business. So with the clarity of hindsight, I implore athletic directors, university general counsel, and lawyers in general to accept my challenge and moral assignment and eliminate this cascade of litigation involving educational institutions and athletic programs.

Michigan High Schools

The Michigan High School Athletic Association provides a bevy of information on health and safety including insurance benefits. Since August 2017 the association provides its members a catastrophic accident medical insurance policy. It pays up to \$500,000 for medical expenses left unpaid by other insurance subject to a \$25,000 deductible per claim. Visit the MHSAA website⁴ that provides:

- Concussion Insurance Benefits Information and Forms
- 2017-18 Return to Activity & Post Concussion Consent Form
- Concussion Education Materials Acknowledge Form
- Concussion Resources
- Student-Athlete Screening Guidance

The return to activity form is to be used after an athlete is removed from and not returned to activity after exhibiting concussion symptoms. MHSAA rules require (1) unconditional written authorization from a physician or nurse practitioner and (2) consent from the student and parent/guardian.



The clearance must be in writing. The medical examiner is the only person who may approve the student’s return to unrestricted activity.

The goal of screening for cardiac abnormalities is to improve detection and to minimize sports-associated cardiac risk. The incidence of sudden cardiac death (SCD) among high school athletes is unknown and ranges from one in 23,000 to one in 300,00. It typically results from a congenital or acquired heart abnormality.

Show Me the Money

For years, there has been a groundswell of talk about whether college players should be paid or profit from their fame before they graduate. This writer answers that question with a resounding NO! The reasons are obvious and you cannot make the amateurism argument if you are paying players. Moreover, paying players raises questions of maintaining the academic integrity of institutions. National Collegiate Athletic Association (NCAA) president Mark Emmert has increased the value of athletic scholarships to cover the full cost of attending college.

In fact, the five wealthiest college football conferences notified the NCAA in October 2014 of their proposals to provide more benefits to athletes under the new governance model. This allows the Big 10, ACC, Big 12, Pac-12 and SEC to pass legislation without the support of the other Division I leagues. These changes would increase benefits to student-athletes including athletic scholarships that will fully cover tuition, guaranteeing multiyear scholarships, allowing former athletes to return to school at any time, and providing long-term health care and insurance to former athletes.⁵

We need to restore authentication to sport and preserve the integrity of competition which in turn will foster even greater competition and help to remove the asterisk in front of new records. It appears that National Football League commissioner Roger Goodell has heard my rumblings and message. Affirmative steps are being taken in earnest to address player safety, conduct, and rule changes.

Continued on next page

As an interesting aside, Tour deFrance cyclist Lance Armstrong, has agreed to pay \$5 million to settle a whistleblower suit claiming he defrauded the U. S. Postal Service-sponsored team by taking performance-enhancing drugs. At issue was a \$32.3 million contract that had included an anti-doping clause. If the case had gone to trial, damages could have been tripled.⁶

U.S. District Judge Anita Brody in Philadelphia approved a \$1 billion settlement for NFL players and family members that became effective on July 7, 2017. The settlement award covers amyotrophic lateral sclerosis, Parkinson's disease, death from chronic traumatic encephalopathy, Alzheimer's, and dementia. Currently CTE can only be diagnosed with an autopsy. The settlement does not currently cover future cases of CTE. Judge Brody has urged the parties to revisit the issue with scientific advancements. The revised settlement approved by Judge Brody covers more than 22,000 NFL retirees and is designed to last at least 65 years. It also provides up to \$5 million to individual retirees who develop Lou Gehrig's disease and other profound problems.⁷

Shea McClellin, linebacker of the New England Patriots, has sustained five diagnosed concussions in his career. Although Shea has not closed the door, he has decided to end his NFL career and will coach football at Mountain View High School in Meridian, Idaho.⁸

Conclusion

The purpose of this article is not to deter participation in football but rather to educate and inform attorneys, athletic directors, coaches, parents, and players of the risks and symptoms of concussion. Participation in sports by young people can engender mental and physical toughness, discipline, sportsmanship and leadership qualities. These individual attributes collectively can also provide an advantage in the game of life.

In the final analysis, to inspire true sport and protect the rights of athletes, Grantland Rice, the dean of sports journalists, said it best:

“When the one great scorer comes to mark against your name, he will not write if you won or lost, but how you played the game.”

About the Author

James A. Johnson is an accomplished trial lawyer. He concentrates on serious personal injury, insurance coverage under the commercial general liability policy, sports & entertainment law and federal crimes. Jim is an active member of the Michigan, Massachusetts, Texas and Federal court bars. He can be reached at www.JamesAJohnsonEsq.com

Endnotes

- 1 Rich Barlow at www.bu.edu/today/2010/nfl-gives-1m-to-bu-center-for-athlete-brain-study/ (last visited 6-22-18).
- 2 <http://usafootball.com> National Center for Injury Protection-Brain Injury Basics (last visited 6-22-18).
- 3 www.lawatlas.org; Choose a Topic; Injury & Violence; Youth Sports Traumatic Brain Injury Laws.
- 4 <https://www.mhsaa.com/schools/health-safety-resources/>
- 5 Detroit Free Press, Nation & World, Oct. 2, 2014 at Sec. C.
- 6 http://www.abajournal.com/news/article/lance_armstrong_will_pay_5m_to_settle_us_suit_claiming_he_defrauded_postal/?utm_source (last visited 6-22-18).
- 7 <https://nflconcussionsettlement.com> (last visited 6-22-18).
- 8 <https://www.yahoo.com/sports/linebacker-shea-mcclellin-likely-played-last-game-due-concussions-151132585.html>

Featured YLS Pet

Name: Nyla Bean Payne (middle name borrowed from Frances Bean Cobain)

Breed: Brittany

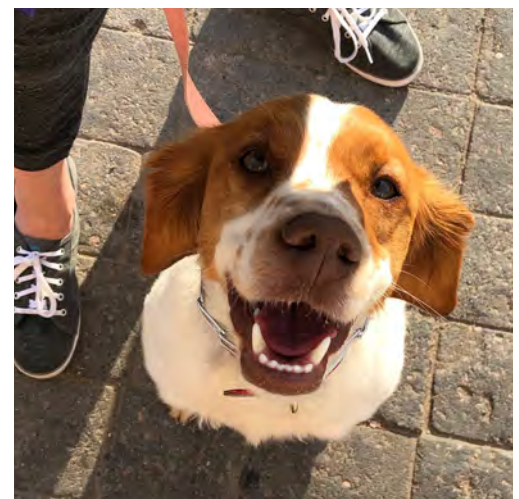
Age: 2 years and 11 months

Birthday: December 31, 2015

Interesting facts: She knows more than 20 commands. She had a 6-week standoff this summer with a chipmunk that seemed to also know the boundaries of her invisible fence. He is still at large.

Favorite toy: fleece blanket

Hobbies: Chipmunk and bird hunting and watching. Long walks in Marquette and finding all the shops in town that give her treats because she does not get them at home often. In the picture, she is waiting nicely at her favorite coffee shop for a treat.



Podcasts for Lawyers

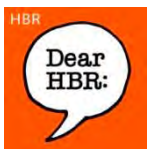
By Laura Kubit

Whether you are on the road or just want something to listen to when you are working out or doing housework, law-related podcasts are a great way to multitask. You can stay informed on legal news or get practice management and personal development tips. You also just enjoy some podcasts for their entertainment value.

There are lots of law-related podcasts out there to choose from. Here are a few of my favorites:



- [State Bar of Michigan On Balance Podcast](#): I was pleasantly surprised by our own SBM’s new podcast. Didn’t make it to the 2018 SBM NEXT Conference in Grand Rapids? On Balance has 13 podcasts with well-edited highlights. Guests include Clio CEO Jack Newton on Clio’s 2018 Legal Trends Report and Justice Bridget McCormack on balancing career and life. Earlier 2018 episodes include *How to Set Up a LEAN Law Firm* and *Bringing E-filing to Michigan Courts with ImageSoft*. It really is worth checking out.



- [Dear HBR](#): This is like Dear Abby for professional work challenges (but with expert guests and evidence-based research). The Harvard Business Review (HBR) is a wonderful publication, and they have a number of podcasts, but this is my favorite. Each approximately 35-minute episode has a theme (i.e. Performance Reviews, Medical Leave, Remote Workers, Bad Bosses, and Race Issues) and there is a guest expert on the theme. The guest expert and two hosts (HBR editors) read three listener letters on the theme, discuss relevant research, and give specific advice on how to overcome the challenge presented. It is not specific to the legal industry, but I find it very relatable.



- [More Perfect](#): Investigative journalism focusing on Supreme Court cases summarizes the first two seasons of this super informative and entertaining podcast. You’ll recognize these key cases from your Con Law class, but the podcast dives deep into the stories behind the cases, and in the more modern cases, you’ll hear interviews with some of the actual litigants. This is a great one to listen to and discuss with non-lawyers.



Season 3 focuses on the 27 amendments to the Constitution, explaining each in an easy-to-understand and interesting way and features music from the actual album they made as a companion to the podcast. You can listen to *27: The Most Perfect Album* for free online or download in from iTunes for \$9.99. Each song is inspired by an amendment and features an artist like Dolly Parton and Devendra Banhart (think Schoolhouse Rock!).



Join the State Bar of Michigan Young Lawyers Facebook page for information on upcoming events!

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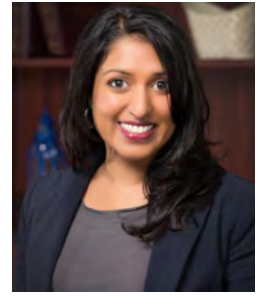
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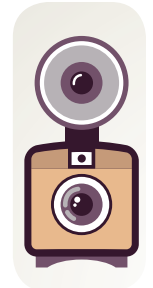
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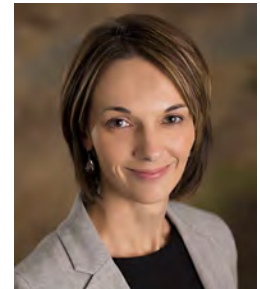
Dustin Kamerman
Okemos



Amy Krieg
Habitat for Humanity of
Huron Valley, Ann Arbor

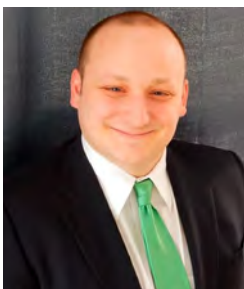


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The 2018-2019 YLS Council