



Society Update

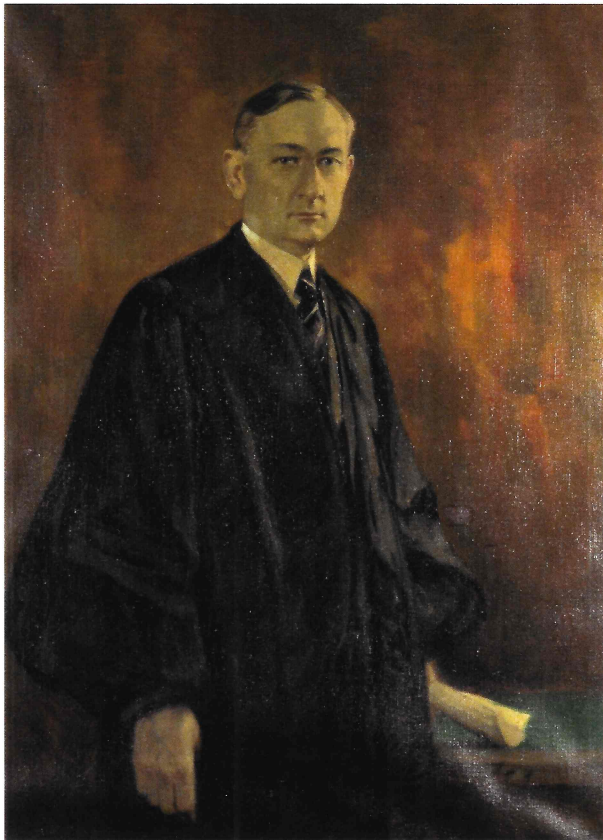
The Official Publication of the Michigan Supreme Court Historical Society

Summer 2020

Portrait of Justice: Ernest Albert Snow

By Judge Fred L. Borchard

The *Portraits of Justice* series is a personal look at the Justices of the Michigan Supreme Court, written by the members of the Board of Directors of the Michigan Supreme Court Historical Society. If you have a story about a Justice you would like to share, please email carriesampson@micourthistory.org



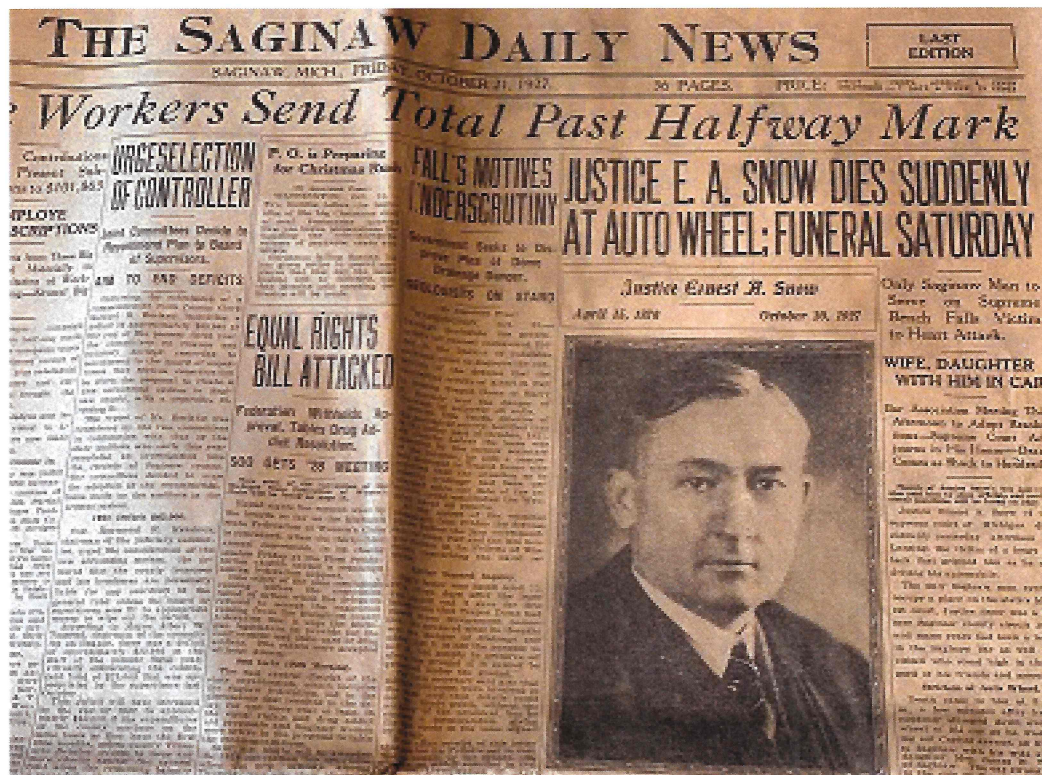
The official portrait of 44th Michigan Supreme Court Justice Ernest Snow, painted by Mathias Joseph Alten. Snow was appointed to the Court by Governor Alex J. Groesbeck on January 1, 1926. Snow was elected to the seat in November 1926. He died the following October.

Justice Snow was born on April 17, 1876, in Hanover, Michigan. Shortly after his birth, the family moved to Kansas, and after a short stay, returned to Michigan, taking up residence on a Chesaning Township farm. Following his primary education in Saginaw, he attended the University of Michigan for three years, and graduated with the law class of 1896. He subsequently was admitted to the State Bar, and took up practice with his father. He spent most of his life in Saginaw, Michigan. He married Miss Jeannie J. Frazee on October 10, 1900.

Following a successful law practice, Justice Snow was elected to the Saginaw Recorder's Court in 1902. From 1907 to 1908 he served as a member of the Michigan Constitutional Convention. In 1917 he became a member of the Saginaw Circuit Bench (10th Circuit) and was re-elected in 1923 without opposition. It was on January 1, 1926, that the Governor Alex Groesbeck appointed Snow to the Michigan Supreme Court to replace Justice Moore. Justice Snow won the vacancy election in November 1926, but died less than a year later, suffering a heart attack.

Attorneys that were familiar with Justice Snow described him as being better known as a trial attorney and Circuit Judge, because of his short tenure on the Michigan Supreme Court.

In private practice, Judge Snow loved to defend rather than prosecute, and during his years on the criminal court he appeared for the accused with one exception. In that case Justice Snow, while a trial attorney, assisted an old friend in a prosecution in Bad Axe, Michigan. The case involved a physician



A copy of the Saginaw Daily News from Friday, October 21, 1927, the day after Justice Snow's death, is shown at left. The article notes that the surviving Supreme Court Justices were honorary pallbearers at Snow's funeral including Chief Justice Nelson Sharpe and associate justices John Bird, Richard Flanigan, Grant Fellows, Howard Wiest, George Clark, and John MacDonald. There were eight justices on the Court from 1906–1968.

accused of poisoning seven children of one family. One of the doctor's attorneys was George Clark, who would later serve as a justice on the Michigan Supreme Court with Justice Snow. The newspapers described the case as being bitterly fought, with a verdict of guilty obtained, and the doctor being sentenced to life in prison in Jackson. The physician was subsequently pardoned by Governor Ferris, because of his profession, and was appointed prison physician.

As an attorney, Justice Snow was quoted as saying there is much more satisfaction in freeing a man than sending one to prison. The papers at the time described him as being very successful in his defense of high crimes. It noted he defended 23 persons charged with murder, and that they were either acquitted or dismissal was made of the charges. Nineteen of the decisions were by juries.

During Justice Snow's tenure on the bench, he decided one of the largest civil cases to this day ever heard in the Saginaw courts. The case involved the Wellington R. Burt Estate, and distribution of Minnesota iron ore property. The aggregated amount of the case totaled six million dollars.

Shortly before Justice Snow's death, he had related to colleagues that he was not feeling well, and following a session of the Court, left for Saginaw

with his daughter and wife. While en route, he suffered a heart attack and subsequently died. Justice Snow was the only member of the Saginaw County Bar and Bench to serve on Michigan's high court. His opinions can be found in volumes 233 to 240 of the Michigan Reports. Described as talented and learned in the law, he achieved the unusual, and won for himself a lasting place in the legal history of our state. His portrait was presented on June 12, 1929, and hangs in the Michigan Hall of Justice in Lansing.



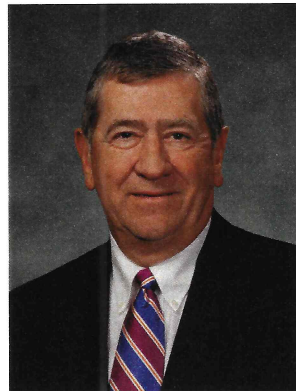
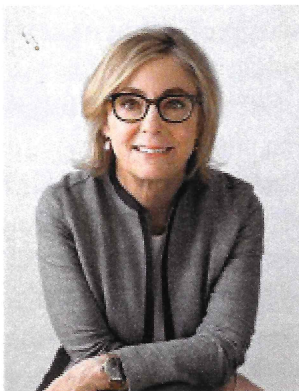
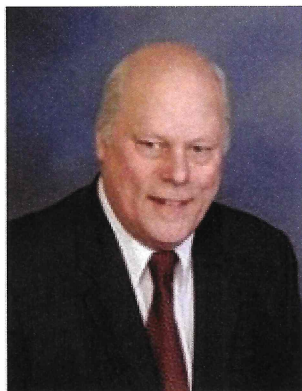
A turn-of-the-century photo of Justice Snow as a young boy was found by Judge Borchard at an estate sale of the family of Justice Snow. His nephew, Judge Eugene Snow Huff, was the subject of the April 1997 luncheon vignette and features in the Verdict of History case in re Huff about judicial power.

Four Elected to Board of Directors

The Society's Board of Directors met by Zoom on June 29, 2020, to elect four new members and its slate of officers. The Board had been scheduled to hold its annual meeting in conjunction with the Annual Membership Luncheon, which was cancelled due to the worldwide COVID-19 pandemic.

In January, the Society lost Judge Alfred Butzbaugh who had served on the Board of Directors since 2002. Also creating vacancies on the Board were the resignations of President Emeritus Charles R. Rutherford, former Michigan Supreme Court Justice James Ryan, and Bloomfield Hills attorney Stephen K. Valentine Jr. President Emeritus Rutherford had served on the Board since 1991; Justice Ryan since 1994; and Mr. Valentine since 2008.

Each term on the Society's Board of Directors lasts three years.

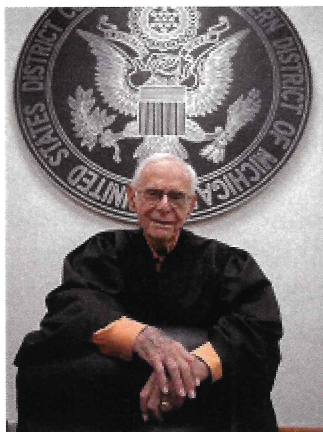


The Board unanimously elected attorneys Mark R. Bendure, Deborah L. Gordon, and John D. Pirich, and Oakland County Circuit Court Judge Victoria A. Valentine to the Board of Directors.

They join the following Board of Directors who were re-elected to three-year terms: Judge Fred Borchard and attorneys Gregory J. DeMars, Matthew Herstein, John P. Jacobs, and Larry Nolan. The Board is rounded out by Lori Buiteweg, former Justice Michael Cavanagh, Judge Avern Cohn, Bruce Courtade, Peter Ellsworth, John Fedynsky, Julie Fershtman, Joe Gavin, former Justice Mary Beth Kelly, Mary Massaron, Judge Denise Langford Morris, Shenique Moss, Janet Welch, and Jill Wheaton.

The Officers of the Board of Directors serve one-year terms. Re-elected at the June 29th meeting were President Carl W. Herstein, Vice President Larry Nolan, Secretary Susan Fairchild, and Treasurer John P. Jacobs.

Judge Cohn Awarded with Society's Legal History Award



The Society unanimously chose to award its highest prize - the Dorothy Comstock Riley and Wallace D. Riley Legal History Award - to Judge Avern Cohn for 2020. The prize was to have been presented to Judge Cohn at the Society's Annual Membership Luncheon in May. In citing the reasons for Judge Cohn as the choice to be honored with the prize, Society President Carl Herstein noted that Judge Cohn has inspired numerous legal history projects relating to Michigan, and his participation in those projects has been invaluable. Herstein wrote that without Judge Cohn's influence, "all of us and our posterity would be immeasurably poorer in our knowledge of our state and its legal history." Congratulations!

Photo: David Guralnick, The Detroit News

Historic Advocates Spotlight

Dynamic Figures in Michigan's Legal History

By Patrick Batterson, Advocates Guild Intern

In recognition of Michigan's rich legal history, the Advocates Guild is spotlighting several attorneys active before the Michigan Supreme Court between 1910 and 1950. The first article highlighted William L. Carpenter and William W. Potter, who were both Michigan Supreme Court justices. This article features Alex Groesbeck, William A. Lucking, and Thomas G. Long.

Alex J. Groesbeck

Alex Groesbeck is a well-known figure in Michigan political history. Elected as Michigan's Attorney General in 1917 and Michigan's Governor in 1921, his time as a Michigan politician would earn him the reputation as a "road builder."¹ In addition to his political career, Groesbeck also spent considerable time advocating before the Michigan Supreme Court.

In an early case, *Wines v Crosby & Co*, 169 Mich 210 (1912), Groesbeck represented a manufacturer of "stove polish." Plaintiff sued the company after she suffered severe burns from the polish, and was attempting to hold the company's owner, Mr. Crosby, personally liable for the injury. The lower court found defendant personally liable for plaintiff's injuries. On appeal, Groesbeck argued to the Court that "an officer or director of a corporation is not liable for its torts, unless he has participated therein," and that his client similarly should not be liable for plaintiff's injuries. *Id.* at 214. He argued that his client had no actual knowledge of the product's dangers and there was no relationship between his client and plaintiff, contractual or otherwise. *Id.* at 213–14.

But the Court ruled against Groesbeck and affirmed the lower court's position that defendant was liable for his corporation's torts in this case because the jury found that the defendant had knowledge of the dangerous character of the product and actively participated in its sale. The opinion has remained relevant in cases well into the twenty-first century, and has been cited in federal Sixth Circuit decisions.²

Groesbeck also played a role in helping the Court define its role in the legal system. In 1920 Groes-

beck, as Attorney General, appeared as amicus curiae on the landmark Michigan case *Anway v Grand Rapids Ry Co*, 211 Mich 592 (1920). In *Anway*, the Court grappled with the application and constitutionality of "Act 150 of the Public Acts of 1919," which authorized courts to make declaratory judgments in Michigan. *Id.* at 592. The parties debated whether it was "unlawful for a street railway company to allow its motormen or conductors or both to work more than six days in any consecutive seven days of twenty-four hours each if the conductors or motormen so desire."

The Court questioned the constitutionality of the act itself, citing grave concerns that declaratory judgments under the Act would cause the Court to become a legal advisor. The Court expressed its concern regarding the judicial branch's role under the Act, saying that "[the] court, with its membership of eight, [would take] up the work of advising three million people." *Id.* at 593–95. Ultimately, the Court found the Act unconstitutional. Even though Groesbeck appeared only as amicus curiae, his influences on this case should not be understated as courts and secondary sources continue to utilize the language found in *Anway*.³

In 1950, Groesbeck helped define appropriate notice for shareholder meetings in his final case before the Court. *Bourne v Sanford*, 327 Mich 175 (1950). In *Bourne*, the directors of a company in which plaintiff Bourne was the only stockholder moved to dissolve that company without giving Bourne any notice. Bourne protested the dissolution, claiming that he needed mailed notice of the meeting, but the directors disagreed. The Court found in Bourne's favor. This case enumerated requirements for notice of shareholder meetings in Michigan, stating that corporate dissolutions are considered special shareholder meetings, and specific notice of the proceedings must be given to the shareholders. *Id.* at 521–23. While this may be common knowledge to a modern practitioner, it was a novel issue advocated by Groesbeck that has been cited in caselaw as recently as 2015.⁴

Alex Groesbeck's far-reaching advocacy, along with his political legacy, helped define his historical importance in Michigan's legal history.

William A. Lucking

William Alfred Lucking is notable for being one of Henry Ford's personal advisors (much like his father, Alfred Lucking). Yet Lucking did much more than simply act as Ford's advisor. According to his obituary, W.A. Lucking also was the president of a cruise liner company and a former newspaper owner.⁵ More importantly, he contributed to Michigan's legal landscape through a handful of important cases before the Supreme Court.

The years 1948 and 1949 were exceptionally busy for Lucking, who appeared before the Court several times, arguing two novel cases involving municipal law and eminent domain, which expanded how a municipal government could utilize the eminent domain doctrine. *Cleveland v City of Detroit*, 322 Mich 172 (1948), *Cleveland v City of Detroit*, 324 Mich 527 (1949). Both *Cleveland* cases were started by the same plaintiff, Ms. Cynthia Cleveland, and argued by Lucking, but each addressed slightly different issues. In the 1948 *Cleveland* case, the City of Detroit was attempting to condemn buildings to construct subterminals for the improvement of a street-rail system. In the 1949 *Cleveland* case, the City of Detroit was attempting to construct an underground parking garage using an existing "above-ground" easement. In both cases, Lucking argued that the city did not have the authority to extend its already existing uses. The Court sided with the City of Detroit and found that "public use" extends both above and below the ground. While Lucking's arguments did not carry the day in the *Cleveland* cases, both cases have had far-reaching effects on municipal eminent domain powers and the *Cleveland* holdings are still binding today.

In 1948, Lucking brought his grievances against the University of Michigan's use and enjoyment of the City of Ann Arbor's police and fire force to the Court. *Lucking v People*, 320 Mich 495 (1948). Lucking asked the Court to hold the University of Michigan's tax-exempt status unconstitutional, and that the University buildings within Ann Arbor be taxed because of the University's enjoyment of the police and fire services provided by the City of Ann Arbor. Finally, he asked that the State of Michigan pay the City of Ann Arbor all of the money for those services, starting

from the effective date of the Michigan Constitution in 1908.

The Court found Lucking's arguments on the unconstitutionality of tax-exemptions for State-owned property unpersuasive, stating that "appellant [Lucking] does not point to any provision in either the United States Constitution or the Michigan Constitution (1908) which imposes any limitation upon the power of the State legislature to exempt property from taxation." *Id.* at 504. The Court thus ruled that the University could still benefit from the City of Ann Arbor's services.

Finally, Lucking went back before the Court in 1948 on behalf of Ms. Cleveland in her trust dispute. *Second Nat Bank & Tr. Co of Saginaw, Mich v Miller*, 321 Mich 28 (1948). This lawsuit was actually the second time Ms. Cleveland's had brought the dispute before the Court, the first being in *Second Nat Bank & Tr. Co of Saginaw v Reid*, 304 Mich 376 (1943), which Ms. Cleveland took all the way to the U.S. Supreme Court.⁶ These cases, while not involving novel questions of law or having any far-reaching impact on the legal profession, are a unique part of Lucking's legal career. Lucking's representation of Ms. Cleveland makes up a great deal of his time in front of the Court, as he would represent her interests several more times, up until the year before his death: *In re Eddy's Estate*, 354 Mich 334 (1958), *Cleveland v Second Nat Bank & Tr. Co*, 354 Mich 202 (1958), and *In re Eddy's Estate*, 356 Mich 120 (1959). Finally, at the spry age of 76, Lucking would once again find himself before the court, championing his own lawsuit, in *Lucking v Welbilt Corp*, 353 Mich 375 (1958).

W.A. Lucking's time in front of Michigan Supreme Court was dynamic. Coupled with his family's history⁷ and his involvement in Henry Ford's legal affairs, Lucking is certainly an interesting advocate in Michigan's legal history.

Thomas G. Long

Thomas G. Long may be a familiar name to some legal practitioners in Michigan, as he was one of Butzel Long's earliest members, but information concerning Long's involvement in Michigan's legal history, let alone his personal history, is scarce. He did, however, appear on multiple occasions before the Court from 1910 to 1950. He was even involved in some of Ms. Cleveland's lawsuits before the Court,⁸ and was also involved in landmark cases, such as

Dodge v Ford Motor Co, 204 Mich 459 (1919). While Long appeared before the court on a myriad of issues, none were more prevalent than lawsuits pertaining to telephone providers.

Long was the attorney of record in at least 14 cases involving Michigan telephone entities from 1915 to 1954, and was the attorney of record (or of counsel) for the telephone companies in each one. The nature of the cases suggests a “tumultuous” time in Michigan history relating to telephone rates. Specifically, there was a great deal of contention around *who* could set telephone rates. For example, in *City of Detroit v Michigan R Comm*, 209 Mich 395 (1920), the City of Detroit contended that it had the sole power to fix telephone rates within the city limits. The City of Detroit and the Michigan Telephone company also debated the reasonableness of telephone rates in that lengthy case.⁹ *Groesbeck v Michigan State Tel Co*, 206 Mich 372 (1919) brought into question whether the U.S. Postmaster could set telephone rates in Michigan. And in *Michigan Bell Tel Co v Michigan Pub Serv Comm*, 315 Mich 533 (1946) the main contention was whether the Michigan Public Service Commission could force the Michigan Bell Telephone Company to reduce its rates. In each of Long’s cases he helped define Michigan’s telecommunications landscape in a time where telephone companies were beginning to become giant corporations. These are only a few examples of Thomas Long’s extensive advocacy before the Court on behalf of Michigan’s telephone companies. As a frequent advocate before the Court, Thomas Long’s advocacy had a great influence on the jurisprudence of the State.

Endnotes

¹ Dr. Burton W. Folsom, *Governor Groesbeck: Road Builder and Defender of School Choice* (Jan. 12 1998), <https://www.mackinac.org/article.aspx?ID=340>.

² *Liggons v Roehm GMBH*, 983 F2d 1067 (CA 6, 1993).

³ William Carpenter also included himself in the court proceedings, filing a brief on constitutionality on the Act in controversy.

⁴ *Fraser Trebilcock Davis & Dunlap PC v Boyce Tr*, 2350, 497 Mich 265 (2015) is the most recent, published case to cite *Bourne*.

⁵ William Alfred Lucking, obituary from the *Detroit News* (Aug. 23, 1960), <https://www.findagrave.com/memorial/59838902/william-alfred-lucking>.

⁶ It also appears that, based on the discussion by the Court in the 1943 case, that Ms. Cleveland had filed an earlier lawsuit on the same issue in 1934. She then removed her dispute to the U.S. District Court, appealed that court’s decision to the U.S. Court of Appeals, and then attempted to have her case heard by the U.S. Supreme Court when the Appeals Court delivered her an unfavorable ruling. Her appeal and writ of certiorari to the U.S. Supreme Court were denied. Also, while not named directly in the U.S. Court of Appeals decision, *Van Auken v Second Nat Bank & Tr. Co of Saginaw*, 117 F2d 938 (CA 6, 1941), the Michigan Supreme Court’s 1943 opinion indicates that Ms. Cleveland was the driving force behind the appeal.

⁷ A. Dale Northrup, *Detroit’s Woodlawn Cemetery*. William Lucking’s father, Alfred Lucking, is also credited as Henry Ford’s personal attorney, as well as being a Democratic Congressman.

⁸ Specifically, Thomas Long was a counsel of record in *In re Eddy’s Estate*, 354 Mich 334 (1958), *Cleveland v Second Nat Bank & Tr. Co*, 354 Mich 202 (1958), and *In re Eddy’s Estate*, 356 Mich 120 (1959).

⁹ The Court’s opinion was incredibly lengthy in this case. So much so that the Court made a point to note that the case’s printed record contained more than 2,000 pages, had briefs before the Court were over 700 pages, and there were over 100 exhibits offered into evidence. The court went as far to say that “there are other questions raised by the record and discussed by counsel which have had our careful consideration, but which we cannot discuss at length without swelling this already lengthy opinion to undue proportion.” *City of Detroit v Michigan R Comm*, 209 Mich 395, 431 - 32 (1920).

The Historic Advocate Spotlight is written by Patrick Batterson, a recent graduate of WMU Cooley Law School. Mr. Batterson is the 2019–2020 Advocates Guild intern.

2020 Coleman Intern: Ireoluwa Ayoola



Summer 2020 Coleman intern Ire Ayoola. The Coleman internship is named for Judge Creighton Coleman, the spouse of first woman on the Court Mary Stallings Coleman (MSC 1972–1982).

The Society is pleased to have the assistance of University of Michigan senior Ireoluwa Ayoola this summer. Mr. Ayoola is working on an update to the Society's booklet *The Brief History of the Michigan Supreme Court*. This publication was first compiled in 1999 by then-Coleman intern Scott Noto.

Ire was born in Lagos, Nigeria, and raised in Lansing then Grand Rapids. As a senior at the University of Michigan, Ire studies political science and psychology with a minor in moral and political philosophy, and working towards law school. Outside of class, he has researched lobbying in state legislatures and community development in Detroit neighborhoods. Ire has been a part of campus organizations like the Central Student Government and Residence Halls Association, currently serving as the vice president of the Kappa Alpha Pi Pre-Law Fraternity at U-M. Ire said that he is "very interested in learning about why societies progress and how we define that progression so I also love studying political and cultural history. This is why I am delighted to be able to work with the Michigan Supreme Court Historical Society this summer."

Welcome to Ire! If you would like to reach out to him, please email ayoola@umich.edu.



U-M Law Prize Winner Luke Barbour

The Society's 2020 Law Prize winner for the University of Michigan Law School is Luke Barbour. Mr. Barbour is a graduating 3L (class of 2020). He received his bachelor of arts magna cum laude from the University of Pennsylvania in 2017, where he majored in political science and minored in history. He is originally from Pittsburgh, Pennsylvania, and will be returning to his hometown upon his law school graduation to join Reed Smith LLP as a transactional associate. Prior to joining Reed Smith, Mr. Barbour served as a judicial intern to Justice Christine Donohue of the Pennsylvania Supreme Court. His papers on Early American Legal History and the Formation of the Common Law are on our website.



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