



Otto Stockmeyer,
seven years into his
employment at the
Court of Appeals.

In The Beginning...Origins of the Court of Appeals Research Staff: Looking Back on 60 Years

By Otto Stockmeyer¹

A defining characteristic of the Michigan Court of Appeals is its large research staff of commissioners and research attorneys. This is the story of how the court came to employ what has become the largest centralized research staff of any appellate court in the country and a model for other appellate courts.

Commissioners

From the court's beginning in 1965, in addition to hearing arguments on pending appeals, the judges faced large weekly dockets of discretionary, or "May I?," matters: applications for leave to appeal, applications for delayed appeal and complaints for original writs.

Within months, Chief Judge T. John Lesinski learned that the Michigan Supreme Court employed two com-

1. If you've been around Lansing's legal community enough, you'll recognize the name of the legendary Otto Stockmeyer.

Mr. Stockmeyer was involved in the Court of Appeals from the very beginning, including working with two of the future judges while the districting of the court was under discussion in the legislature and writing "Michigan's New Court of Appeals: An Introduction" for the Michigan Bar Journal as the first candidates were campaigning for the primary.

For the court's 50th anniversary, Mr. Stockmeyer wrote "In The Beginning...Origins of the Court of Appeals Research Staff" for the Ingham County Bar Association *Briefs* publication. *Briefs* has provided reprint permission and Mr. Stockmeyer has provided updates.

missioners to assist the court by reviewing and recommending disposition of its discretionary docket. He wanted one, too.

Lesinski broached the idea of hiring a commissioner to Chief Judge Pro Tem John Fitzgerald. I was Fitzgerald's law clerk at the time and happened to be sitting in his office as Lesinski and Fitzgerald discussed on speakerphone the idea of hiring a commissioner.

Fitzgerald voiced support for the idea. Then he shot me a quizzical look, I nodded "yes," and they hired me on the spot as the court's first commissioner.

(A digression: Before the Court of Appeals, I had worked for the Senate Judiciary Committee. Lesinski, as Lt. Governor, was the Senate's presiding officer and Fitzgerald was a Senator. So they'd had an opportunity to appraise my work product before my brief tenure as a law clerk.)

Lesinski directed me to go and interview Joseph Planck, the Supreme Court's senior commissioner, to learn how the commissioners functioned and obtain sample forms. Planck had been a distinguished lawyer and president of the State Bar of Michigan.

But by then he was totally deaf, something neither Lesinski nor anyone else told me. Only afterward did I learn why his answers seemed so unrelated to my questions. The next day I went back and interviewed the other commissioner.

I was appointed commissioner on June 1, 1965. It soon became apparent that one was not enough; by mid-1968 three more commissioners were added.

We all worked out of a suite of offices on the same floor as the judges in Lansing. Today the court's eight commissioners are equally distributed among the court's four district offices.

The Research Division

In addition to its director, the court's research division today has five research supervisors, forty-five research attorneys and senior research attorneys, and ten part-time contract attorneys. That's a far cry from the earliest days of the court's prehearing research unit. Then it was just me and a handful of cast-off law clerks.

In the beginning, the Supreme Court transferred 365 appeals to the new Court of Appeals. This instant backlog grew rapidly in the following years as attorneys began to take full advantage of the new appeal of right in both civil and criminal cases.

The court's initial response to an increasing caseload was to give each judge a second law clerk to augment performance of the traditional law clerk duties: researching pending appeals and helping draft opinions. But soon it became clear that with extra law clerks, the judges produced more lengthy opinions but not more numerous ones.

So in March of 1968, Lesinski decided to experiment with creating a centralized staff to do the legal research half of the law clerks' job. The staff would research pending appeals and prepare prehearing memoranda (elsewhere called "morning reports" or "bench memos"). Each judge gave up a law clerk to form the new unit.

Having organized the Commissioners' Office, I was tapped to head up what became the research division, with nine second-hand law clerks.

Although they gained valuable experience clerking, some of the former law clerks were unhappy at having to part company with "their" judge and relocate to makeshift quarters in Lansing.

Our first offices occupied un-air-conditioned space on an upper floor of what is now the Washington Square Building. With no window screens, in the summer months research attorneys sometimes would return from lunch to find a pigeon strutting (and doing other pigeon things) on their desk.

But the experiment soon proved successful. With research workups on all appeals prior to hearing, the judges were able to absorb a 33% greater caseload with no net increase in personnel (except for me and my secretary). With some additional staff and more frequent use of per curiam opinions, by 1971 productivity per judge had increased by 46%.

The court's research division became recognized as a new model for appellate courts in an era of rapidly expanding caseloads. We were flattered to be imitated by a dozen other appellate courts, including four that the

National Center for State Courts selected for demonstration projects.

Law professors oversaw each project. The overseer at the Virginia Supreme Court was a young University of Virginia faculty member, Antonin Scalia.

Moving On

I left the court in 1977 to begin teaching at Cooley Law School. By that time, the research division had grown to 30 research attorneys, working out of offices in Detroit, Lansing, and Grand Rapids.

The court decided early on that the positions would be for one or two years. Thus, much of my time was being taken up with recruiting, training, supervising, and helping out-place recent law school grads.

By then both Lesinski and Fitzgerald had departed, and I had concluded that I didn't go to law school to become an administrator. As it turned out, I was looking for something else to do at the same time that Cooley Law School achieved its accreditation.

Almost a quarter-century after I left the Court of Appeals, one of my Cooley students, Larry Royster, became the research director. Now clerk and chief of staff at the Michigan Supreme Court, Royster started as a Court of Appeals research attorney. He is one of more than a thousand research division alums who have gone on to achieve success in every field of the legal profession.

All thanks to T. John Lesinski's grand experiment.



Several years later, in the Research Division offices during the mid-70s, before Otto departed for Cooley Law School