

Lawyers, *Law-making,* *and* LEGISLATIVE POWER

Reflections on the Modern Michigan Experience

BY JANET WELCH AND ELIZABETH K. LYON

Let the Evidence Show: Lawyers as Natural Leaders

Listening to the proverbial man on the street, or googling onto lawyer-bashing websites, you might think virtually all American lawmakers are lawyers. Listening to the conversation in legal circles, however, one hears a different lament: the number of lawyer-legislators is dwindling significantly.

What gives?

The truth is there's truth in both assertions. As Judge Bandstra points out in his thoughtful piece "Looking Toward Lansing" on page 28, although the percentage of lawyers in Congress has been gradually diminishing over the last several decades, lawyers still continue to dominate by a wide margin over other professions. And indeed, why should it be otherwise? How better to show off the talents and nourish the interests that led one to law school, and to apply the skills acquired

there, than through the challenge of making laws to protect our society and advance the common good?

Common sense alone suggests a legal education is an invaluable asset in the intricate business of lawmaking, and consequently, a law degree should be a coveted credential in the legislative world.

Our historical data bear this hunch out. The overwhelming predominance of lawyers among our Founding Fathers noted by Judge Bandstra is just the beginning of the story. Throughout our country's history, serving as a lawmaker has been a dramatic political launching pad for lawyers at all levels of government. Most dramatically, 24 of our 43 presidents have been lawyers,¹ and all but six² had legislative experience before assuming the presidency.

Lawyers have not just dominated legislative chambers in numbers; they have domi-

nated in leadership. In Congress, lawyers abound in the annals of legendary leaders. The most famous Speakers were all lawyers—Henry Clay, Nathaniel Macon, Thomas "Czar" Reed, Nicholas Longworth, Joseph G. Cannon, John McCormack, Sam Rayburn, and Carl Albert. In the Senate, virtually all the early Majority Leaders were lawyers; in modern times, the lawyers who served as Senate Majority leader include Robert Taft, Alban Barkley, Howard Baker, Robert Dole, George Mitchell, Trent Lott, and the longest-serving Senate Majority Leader in U.S. history—Mike Mansfield.

Whether the achievement of these leaders was advanced by the discipline and knowledge they acquired in law school, or whether their natural talents and ambition would have propelled them to political prominence even without their professional training is unknowable. What is undeniable, however, is a powerful connection between affinity for the law and affinity for legislative service.

The Michigan Experience, 1970–2005:³ A Persistent Pattern of Prominence

In Michigan, as in other state legislatures, the percentage of lawyer-legislators in the State Capitol is not as dramatic as in Congress. But the presence and influence of lawyer-legislators nonetheless remains distinct and impressive. And while the evidence shows the number of lawyer-legislators in Lansing currently stands somewhat below former peaks, it also confirms that our state legislature is far from experiencing a "legal-brain drain."

Most importantly, the 21 lawyer-legislators of the 93rd Legislature share with their predecessors a leadership and policy presence substantially greater than their numbers. Take a look at their profiles on page 20. You will find impressive evidence of their power and responsibility.

The influence of the lawyer-legislators should not be judged wholly by their formal leadership positions and committee assignments, however. Understandably, legislators look to professional experience and training of their fellow legislators for guidance—to educators on school finance and reform issues, to farmers on agricultural issues, to insurance

agents on insurance law. Uniquely, however, legal training and experience lend credibility on legislative issues across the board. Although the value of a Bar membership as a legislative credential cannot be precisely measured, time and time again lobbyists, journalists, and legislators themselves remark upon the extent to which members of the legislature turn to lawyer-legislators for expertise and guidance on a wide range of policy issues, as well as for advice on drafting and interpretation.

Another dramatic piece of evidence that status as an attorney is prized as a legislative credential is the fact that several state legislators have taken on the extraordinary challenge of pursuing a law degree while simultaneously serving in the Legislature.⁴ Among their number are then-Majority Leader and future Governor John Engler, and Rep. Paul Hillegonds, long-term House Republican leader who served as Co-Speaker⁵ and Speaker of the House from 1993 to 1996.

The modern period of Michigan legislative history also contains a bizarre negative

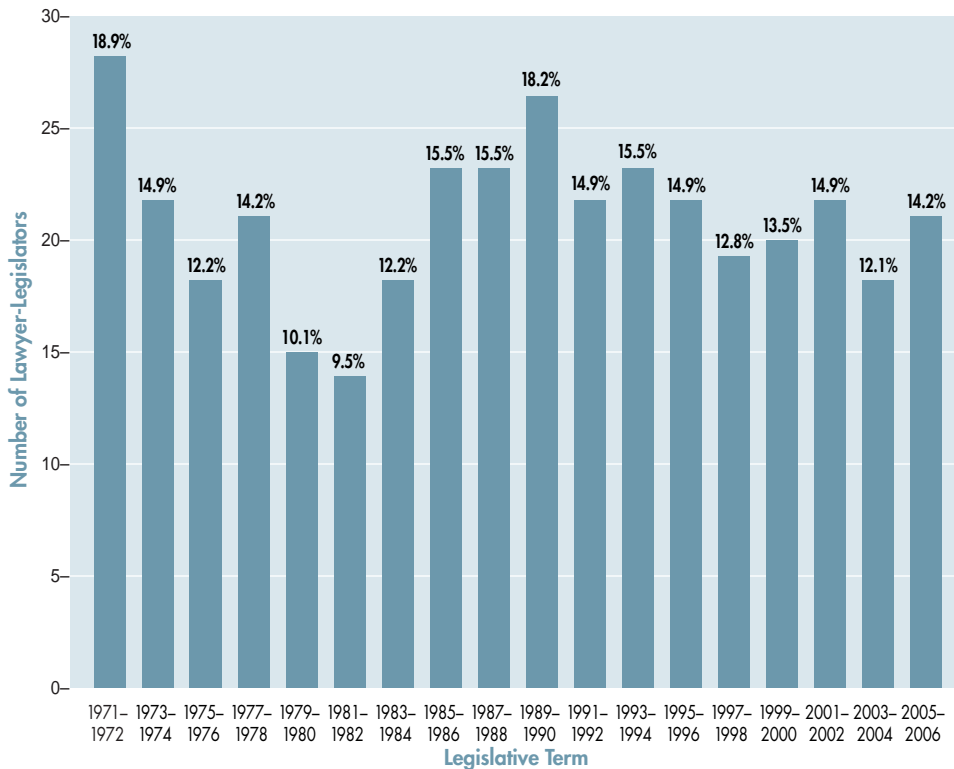
example of how coveted Bar membership can be: the strange story of legislator John Smeekens of Coldwater, who served in the State Senate from 1957 to 1964, and the State House from 1969 to 1974, attending and graduating from law school during that period.⁶ In 1971, Smeekens importuned the Michigan Supreme Court to be admitted to the Bar without passing the bar examination, presenting the Justices with evidence that he had been diagnosed with a terminal illness. The Court granted what they believed was the last, fervent wish of a dying man, and Smeekens became a member of the Bar that same year. Four years later, the still-healthy ex-legislator was disbarred, and his appeal denied by the Court in 1977.⁷

Term Limits a Limit on Lawyer Influence?

As in Washington, a palpable leadership presence is part of a long-standing pattern of lawyer-power in Lansing. Unlike Congress, however, the top leadership positions in the state House and Senate in recent years are not

NUMBER OF LAWYER-LEGISLATORS PER TERM

The percentage of the Legislature composed of lawyers is indicated.



clearly dominated by lawyers. The relative lack of dominance of lawyers in the positions of Speaker and Senate Majority Leader in the State Capitol compared to Congress may be at least partially explained by a heavy gravitation of lawyer-legislators out of the State Legislature into other positions of power: judge-ships,⁸ Congressional seats,⁹ and the governorship.¹⁰ In these cases, the influence of the profession on public policy is re-channeled rather than diminished.

It remains to be seen whether the advent of term limits will serve to accelerate the movement of lawyer-legislators out of the legislature into other positions of power as the entire legislature is forced to play musical chairs to the tune and tempo of the term limit amendment. If lawyers move up and out of the legislature faster than their term-limited colleagues, even if the percentage of lawyers remains constant or even grows, lawyer influence within the legislature may diminish. On the other hand, some Lansing watchers have speculated that the perpetual inexperience term limits force upon the legislature puts the legal training of lawyers at a greater premium than ever, and thus holds the potential for enhancing lawyer influence in the State Capitol.

Common Bonds

Take another look at the cover of this *Journal*. Like the profession itself, the lawyer-legislators you see there reflect a rich diversity of background, experience, and political views. On virtually any controversial legislative issue you will find a lawyer-legislator on every side, often leading the debate. As a practical matter, this means that whatever your views on a particular piece of legislation, you are likely to find one of your fellow members of the Bar to champion your cause. Again, why should it be otherwise? After all, lawyers are the only band of professionals outside the arena of professional sports whose work consists of opposing one another.

Because our lawyer-legislators have been schooled in the art of disagreement, however, they have the training to be leaders and role models not only in articulating the substance of policy arguments but also in expressing their views with civility and respect, thereby elevating the level of legislative debate.

Whatever their political and cultural differences, they share with each other and with all members of the State Bar a common bond of training and commitment. Perhaps, in the end, that is the real secret of the extraordinary evidence of lawyer-power throughout our legislative history. And in that bond lies the best hope for success in meeting our common goal: the continuous improvement in the administration and quality of justice for all. ♦



Janet Welch is General Counsel of the State Bar. She was director of the nonpartisan Senate Analysis Section from 1980 to 1985, after serving five years in the House Legislative Analysis Section. A former law clerk to Justice Robert Griffin, she also served five Chief Justices and the Court, first as executive analyst and then as Counsel. In 1998, the Council of State Governments named her a Toll Fellow for outstanding achievement and service to state government. She is a graduate of Albion College, the University of Michigan Law School, and the Senior Executives in State and Local Government Program at Harvard's Kennedy School of Government, and was a Fulbright Scholar in comparative literature at the University of Zagreb. Ms. Welch can be contacted at jwelch@mail.michbar.org.



Elizabeth K. Lyon is the Public Policy Program Analyst for the State Bar. She is a 2003 graduate of James Madison College at Michigan State University and has worked as a legislative specialist at a Lansing lobbying firm. Ms. Lyon can be contacted at elyon@mail.michbar.org.

Footnotes

1. J. Adams, Jefferson, Madison, Monroe, J.Q. Adams, Van Buren, Tyler, Polk, Fillmore, Pierce, Buchanan, Lincoln, Hayes, Arthur, Cleveland, Harrison, McKinley, Taft, Wilson, Coolidge, F.D. Roosevelt, Nixon, Ford, Clinton.
2. Arthur, Cleveland, Taft, Wilson, Coolidge, Clinton.
3. This article focuses exclusively on the period of time for which the inconclusive evidence of the Bar membership of Michigan legislators could be validated by the memory of contemporaries. For

purposes of this article we characterize this period as "recent history," recognizing that this is a relative term. The authors would like especially to thank Bruce Timmons, whose service to the Legislature encompasses the entire period canvassed, for his review and input. For future *Bar Journal* articles we plan to tackle the even more daunting task of documenting the impact of the lawyers in the Michigan Legislature prior to 1970. We invite and welcome the involvement in this project of the Michigan history enthusiasts among our membership and readership.

4. The Cooley Law School opened in Lansing in 1972, and the Michigan State College of Law, as DCL at MSU in East Lansing in 1995.
5. The 87th Legislature was evenly divided between Republicans and Democrats. Under the *Democratic/Republican Leadership Agreement re Organization of the Michigan House of Representatives*, Hillemonds and Curtis Hertel were elected Co-Speakers, and alternated monthly as presiding officers of the House. The innovative leadership agreement, which Hillemonds was instrumental in crafting, is studied as a model of practical, effective political compromise.
6. Smeekens made his first claim to statewide fame in 1957 when he obtained 25,000 state maps from the highway department, added his picture and a political message, and distributed them to his constituents. In the immediate aftermath, the Legislature imposed a 1,000-map-per-legislator quota, then denied appropriations for printing the maps altogether. Today state law and tradition bar the use of the maps for campaign purposes; only the names and images of the Governor and highway commissioner are printed on the maps. Le Roy Barnett, "Paper Trails: The Michigan Highway Map," *Michigan History Magazine*, November/December 1999, pp 18-23.
7. *State Bar Grievance Administrator v Smeekens*, 396 Mich 719 (1977). For anecdotal history, see the Michigan Supreme Court Historical Society interviews of Justices Thomas E. Brennan and John B. Swainson by Roger F. Lane, at www.micourt.history.org.
8. In recent history, examples include Judges Laura Baird, Richard Bandstra, Thomas Brown, Christopher Dingell, Jennifer Faunce, Donald Holbrook, David Gubow, Charles LaSata, Rudy Nichols, Michael Nye, Thomas Power, William Runco, Joseph Swallow, Theodore Wallace, and Tracy Yokich.
9. In recent history, examples include James Blanchard, William Brodhead, Garry Brown, David Camp, Dennis Hertel, Sander Levin, Thaddeus McCotter, Lynn Rivers, William Schuette, Bart Stupak, and Robert Traxler.
10. Although the roster of Michigan governors is rich in lawyers, in recent history only John Engler, James Blanchard, and John Swainson exemplify the rise of the lawyer-legislator to the position of chief executive of state government, Engler and Swainson from the State House, Blanchard from Congress.