

The Declining Ranks of Lawyer Legislators

By Alan J. Borsuk

They're called lawmakers, right? So it should be expected that a significant portion of state legislators are lawyers. But in fact, there has been, nationwide, a long-term trend toward fewer people with law degrees among the members of state legislatures.

The Wisconsin legislature, with 132 members (33 in the Senate, 99 in the Assembly), is representative of the national trend. In its current session, 12 state representatives in the Assembly and only 2 senators hold law degrees, just over 10 percent of the total. Two lawyers in the Senate is the lowest number in decades and perhaps in state history.

In 1969–1970, there were 32 Wisconsin legislators who had been trained in the law, just under a quarter of the total, according to a 2012 article in the *Wisconsin Law Journal*. The total was based on review of biographies in editions of the *State of Wisconsin Blue Book*, the official compendium of information about state government.

By 1999–2000, the number had fallen below 15. It leveled off after that, even rising to close to 20 in following sessions. But it was 12 in 2012–2013. The subsequent arrival of three lawyers as new members of the Assembly and the departure of one lawyer who was a senator (Glenn Grothman, upon his election to the U.S. House of Representatives) yielded the current total of 14.

Nationwide, the National Council of State Legislators said in a fall 2015 report, 14 percent of legislators listed their profession as “lawyer.” The actual percentage of those with at least a law degree may be a bit higher, since 12 percent listed their occupation as “legislator” and some of those may be lawyers or have law degrees. Thirty percent of legislators gave their profession as “business people,” which also might include some with

training in the law. Legislators were allowed only one answer in the survey.

In all events, “[t]here are substantially fewer lawyers serving in state legislatures than there were 40 years ago,” the report said. In 1976, the portion of legislators giving “lawyer” as their occupation was 22.3 percent, according to the organization.

Three members of the current Wisconsin Assembly graduated from Marquette Law School. Their personal histories and their thoughts on being members of the legislature shed light on the value they see in being a lawmaker with training in the law and on why the ranks of lawyers have thinned. We profile these Marquette lawyers here in the order of their length of service.



State Representative Jim Ott

After many years as a television meteorologist in Milwaukee, Jim Ott was a well-known figure before he went into politics. He had been considering what he might do beyond the TV studio and thought that a law degree would improve his chances of finding “something interesting.” It took him five years to complete Marquette Law School, sometimes squeezing in classes between early-morning and noon-hour on-air appearances. He graduated in 2000, at the age of 52.

Ott became a member of the bar but never maintained a private practice. He left WTMJ-TV in 2006 and decided to run as a Republican for the Assembly in a district generally covering northern



State Representatives Cody Horlacher, Jim Ott, and Evan Goyke at the Wisconsin Capitol.

Milwaukee suburbs along the Lake Michigan shore. “I’ve always been interested in the political world,” he said. He won that race and has been reelected every two years since.

As with many lawyer-legislators, Ott’s committee assignments have in large part been tied to legal matters. He currently is chair of the Assembly’s Judiciary Committee, and he co-chairs the Law Revision Committee. He is a member of the Joint Committee for the Review of Administrative Rules, the Committee on Criminal Justice, and the Wisconsin Judicial Council.

“The legal background has been just invaluable,” Ott said. He has a voice in consideration of almost every bill that involves matters of the law. In his work on the judicial council—a body made up of representatives of the court system, the legislature, the law schools, and others—he has been involved extensively in a large undertaking in recent years to overhaul the state’s statutes related to the judicial and criminal systems. “I’ve been able to help shepherd this through the legislative process,” he said, adding that he thinks the process will reach a successful conclusion in 2018. Ott’s own involvement “would never have happened without the law degree.”

A lot of what he has worked on does not attract public attention. One accomplishment, he said, was the adoption, with bipartisan support, of a law on transfer of structured legal settlements. Until recently, Wisconsin was the only state without such a law, Ott said. Other legislative efforts have attracted attention, such as a bipartisan effort that led to making “upskirting”—shooting unauthorized photographs of a person’s covered body parts—illegal.

Ott said that pay is certainly one of the reasons that there are relatively few lawyers in the legislature. “If you have children in college and you are facing other expenses involved in raising a family, it can be difficult to get by on \$50,000 a year,” he said. (The legislative salary is \$50,950, to be exact.) The pay, he said, “may be why they call it public service.”

Can you supplement the salary by maintaining a private practice? Both nationally and in Wisconsin, many who have looked at that say there has been a trend toward treating legislative work as a full-time job and not as the part-time matter it was in the past.

Ott said, “I just do this as my full-time job. . . . It’s definitely not a part-time job.” He said he doesn’t think he could maintain a private practice >>

with his schedule of commitments related to being a legislator.

Ott intends to seek reelection this fall, and he is uncertain whether that will be his last race—he'll be 71 at the end of that term. But he finds the work interesting and challenging, and he is proud of his accomplishments. There's a lot more cooperation in the legislature than many people realize, he said. But, "obviously, it's a lot more confrontational than doing the weather."

State Representative Evan Goyke

Evan Goyke grew up in a political family, so his interest in running for office was probably no surprise to those who knew him. He graduated from Marquette Law School in 2009 and worked for three years as a public defender. During that period, he also was one of the leaders of the Law School's "Street Law" program in which law students engage and educate Milwaukee high school students about the legal system.

In 2012, Goyke won a contested Democratic primary to represent a district covering much of the west side of Milwaukee. He was reelected in 2014.

Goyke sits on committees dealing with subjects such as agriculture and veterans' affairs, but, as with other lawyer-legislators, his assignments lean toward legal matters. He said, "Would it make sense to have a farmer on the agriculture committee? . . . Having expertise in an issue area can be a great benefit." He pointed out that all three Marquette lawyers in the Assembly are on the criminal justice committee.

Being a lawyer is a plus in the legislature in general, Goyke said. He said his legal training gives him a better understanding of how passing or changing a law could affect people. And it gives him more confidence in expressing himself on controversial issues.

"Look how many laws we've passed in the last five years that ended up in the [state] Supreme Court," he said. To be sure, being a Democrat in a legislature with Republican majorities in both houses, Goyke does not often see his views prevail. "The court of public opinion is not

necessarily swayed by intense legal arguments," Goyke said. "It doesn't seem to necessarily carry the day when I argue that something is unconstitutional, but I argue it nonetheless." Those arguments are part of the record when issues go to court, he said.

Why are there not more lawyers in the legislature? "It's a combination of time and money," he said. He tried to maintain a private practice when he started in the Assembly. "I was miserable," he recalled. He felt that each role reduced his effectiveness in the other role. "I can't maintain a practice outside of being in the Assembly," he concluded. He said some legislators do it by belonging to larger firms where colleagues can cover for them when legislative duties intervene.

Goyke, now 33, intends to run for reelection in 2016.

State Representative Cody Horlacher

Cody Horlacher said he was just finishing his last exam at Marquette Law School in 2014 when news broke that longtime State Sen. Neal Kedzie was not going to run for reelection and Rep. Stephen Nass was going to give up his seat to run for Kedzie's seat (which Nass won). The assembly district covers parts of Waukesha and Jefferson counties, near where Horlacher grew up. Horlacher said he knew he was young, he didn't have family or job commitments, he liked and had been involved in politics since he was in middle school, and "these opportunities don't come around very often." He ran for the seat and, in the heavily Republican district, won a contested primary, which equaled winning the seat.

Now 29, Horlacher is one of the younger members of the legislature. "I love this job," he said. "This is a dream come true." He said the first months were "like drinking from a fire hose," but his experience working during law school as an intern for Wisconsin Supreme Court Justice Michael Gableman gave him some familiarity with the state capitol and life within it.

Horlacher considers his strength in legal matters to be in criminal law. While campaigning for the Assembly in 2014, he worked half time in

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the Walworth County district attorney's office, and he continues to do that on a limited and pro bono basis when the legislature is not in session. He is currently vice-chair of the judiciary committee.

He said his legal education gives him a better understanding of procedure and the way courts and the broader legal system work. "It gave me a certain level of authority to share within my caucus," he said.

Why are there relatively few lawyers in the legislature? "People have other priorities," he said. They might be more interested in private practice or have concerns about how the life of a legislator would affect them.

The legislature is not the road to riches? "For sure," Horlacher agreed. You can't bill for additional hours when you go to a lot of events in your district, which Horlacher does. "It's a full-time job," he said, and it often needs to be done at unusual hours, both on the legislative floor and at home.

"For me personally, it's worked out" to be in the Assembly, he said. "I'm a very social person, and that's what I love about this job—being part of the community."

Money and time. Too little of the former, too much of the latter. That appears to be the consensus on the causes for the erosion in the percentage of lawyers in legislatures. For those who continue in the job, and in many cases love it, they are willing to make sacrifices on those two scores.

Alan Ehrenhalt, a senior editor for *Governing* magazine, wrote in a piece in the November 2015

issue, "Half a century ago, the notion that lawyers wrote most of the laws was pretty accurate. . . .

That began to change in the 1960s and 1970s for a variety of reasons. Legislative sessions came to take up more of the year, making it difficult for attorneys to keep up with their practices while they served in office. Legislative pay fell further and further behind the amount lawyers could earn on the private side. And lawyers were permitted to advertise for clients, challenging the traditional idea that serving in office was the best way to promote one's name and attract new business."

It's hard to justify a forecast for an upward trend since the factors of time and money (to say nothing of lawyer advertising) are not likely to change.

In the case of Wisconsin, there is no guarantee that even the current total will be sustained. One of the freshman lawyers in the Assembly, Republican David Heaton of Wausau, announced in January that he would not seek a second term, citing the needs of his family, which includes three children under seven. And one of the only two lawyer senators is Fred Risser. May he live and be well, he is America's longest-serving state legislator (he was first elected to the Assembly in 1956) and will turn 89 in May.

Horlacher has a two-word summary for how he feels about using his legal education to help shape laws: "It's awesome." But these days, for lawyers, the sentiment is more often outweighed by other factors. ■