

Lawyers As LEGISLATORS  
by Andrea Baumer

When you think of the Arizona Legislature, what comes to mind? Do you, like many, conjure up images of a smoke-filled room teeming with lawyers in pin-striped suits making decisions about current legislation? In fact, only nine of our 90 legislators are lawyers.

Why are so few lawyers serving in the Arizona Legislature? For many, it's the tremendous personal and financial sacrifices associated with being a legislator, lawyer and family member. Long hours, limited family time and the difficulty of juggling all three aspects of their lives make it prohibitive for most lawyers to run for office. Add term limits, and year-long campaigns every other year, and becoming a legislator loses much of its appeal.

Nonetheless, attorneys play a vital role in the legislature by virtue of the fundamental training they receive in law school. This working knowledge of the law allows them to provide expertise in areas in which many others have limited knowledge.

"The basics a lawyer learns in law school are very helpful in serving as a legislator," says Senator John Kaites. "Many non-lawyers in the legislature have a good understanding of the law after serving, but an attorney comes *into* the job with the knowledge and experience of the law."

Sen. Kaites observes that being a legislator is similar to having a job as an attorney in that they both must market and sell their ideas in the process. Each needs to intimately understand their issue and argue it effectively. Similar qualities are needed in both arenas and an attorney is trained to speak publicly in a concise, convincing manner.

Sen. Kaites also notes that lawyers help write clear and convincing legislation because of their day-to-day working knowledge of the law. As lawyers they can analyze and draft more effective laws.

Rep. Ernie Baird notes that there is no great love for attorneys among other legislators. As with society in general, critical remarks and disparaging jokes about the profession are commonplace. However, other members of the legislature often seek out attorney members for their opinion or for assistance in drafting legislation. And despite their expressed attitude about attorneys, other legislators have elected their lawyer-legislator colleagues to leadership positions in both the House and the Senate.

On term limits Rep. Baird remarks, "This must be the only job where people apparently believe that a lack of experience is a positive thing. After you've been here for a couple of years, have learned to be effective and have developed some substantive expertise, they want some totally inexperienced person to take over."

Sen. Marc Spitzer agrees with Rep. Baird's assessment of the general sentiment toward lawyers in the legislature. He contends that most attorneys are not held in high esteem in the legislature, but that is simply a mirror of society. He feels the fast pace, low salary (\$15,000 a year) and time demands discourage most lawyers from running for the House or Senate.

Sen. Spitzer believes that he plays a valid and important role in the legislative process, but not just because he has a law degree. "I am not a lawyer acting as a legislator," he says, "I have a job with certain experiences in the law. I am a legislator who happens to be a lawyer. I use my tax background not as a lawyer, but as a legislator who is lawyer."

"When issues arise, other legislators look to the attorneys because of their expertise in law," notes Rep. Baird. "Lawyers have a greater impact immediately because this is about the law."

Sen. Spitzer has many inquiries from legislative colleagues who request his input on the language of a bill or amendment based on its legality. Even though he is a tax attorney, his legal knowledge and skills on other issues are seen as a huge benefit for the legislature.

Lawyers have another unique ability, according to Rep. Barry Wong. Their training helps them to watch for language in legislation that may be misconstrued and lose its original intention.

As Rep. Wong suggests, "Lawyers are trained to look for the pitfalls of legislation that is drafted overly broad. All legislation is initially drafted by legal counsel. It is during the committee hearing, debate or conference committee process that imprecise language may be added to a bill in the form of an amendment. It is at that time the legislation may become convoluted or too broad in its scope. As a result, loose language may lead to the creation of laws that are other than what was originally contemplated."

If this happens, corrective language can be passed but it complicates the process even more. Further, "Legislation enacted into law which is poorly drafted or is vague could be potentially costly to the citizenry if a dispute arises over the interpretation of the law," says Rep. Wong. He believes lawyer-legislators are

helpful to the legislative process in minimizing such errors. Rep. Wong contends that voters want people in the legislature who understand the process... both in crafting and analyzing legislation.

"I think it is important to point out that attorneys make excellent legislators because of their communication and analytical skills," says Sen. John Greene. "Legislators deal with very technical subjects including the environment and taxation."

He adds that a tremendous amount of credit for effective legislation is due the legislative staff, which includes about 25 lawyers. Legislative staff sacrifices a great deal both professionally and personally to make things happen for legislators.

Rep. Robert Updike brings unique experience to the legislature. He has been part of all three branches of the legal process by participating in the three facets of checks and balances — as a former prosecutor, defense attorney, pro tem judge and now a legislator. Legislators who are not lawyers often seek out the advice of the lawyer-legislators calling upon their expertise in the law and in specific areas such as criminal, tax and environmental law.

There are some, however, who believe that attorneys should not serve as legislators. They believe it is an inherent conflict because lawyers are also officers of the court. According to Sen. Greene, there is also a misconception held by some that lawyer-legislators are self-serving in their legislative work and that their goal is to pad their own pockets. He faults the media, in part, for generating this negative image of lawyer-legislators.

"The press is merciless with legislators and more than 50 percent of the things written are flatly untrue or, at best, slanted," says Sen. Greene. "The press likes to attack people's motives and this may not reflect well on a law firm by creating negative publicity." He also believes the intense scrutiny of legislators deters many highly qualified candidates, not just lawyers, from running for office.

"Somebody who solves a problem is not newsworthy, people who create problems are newsworthy," agrees Sen. Spitzer. According to Sen. Spitzer, the media chooses to cover only negative issues rather than the legislation that benefits Arizona, like improvements to child support laws and charitable donation legislation. Sen. Spitzer has had to inform his constituency at his own expense because he feels the media has failed to do so.

Lawyers pay a big price, both personally and professionally, to serve in the legislature. Most claim a huge loss in time available for their families and a diminished earning capacity because of the tremendous amount of time required at the legislature and at the law office.

"The first year I made less money cumulatively, there was a drop in earning capacity," says Sen. Kaites. "That has since balanced itself out though as I learned to prioritize my time."

When asked how he manages to fit his family and business into his hectic legislative schedule, Rep. Baird says, "To be blunt, it's a total disaster. The business goes to pieces and the family needs attention."

Rep. Baird estimates he spends more than half of his time on legislative issues, while making only \$15,000 as a legislator. He acknowledges, though, that a lawyer's predicament is not met with much sympathy.

"Most lawyers have created a certain standard of living by making a fair amount of money practicing law, so that the average person is relatively unsympathetic to our concerns of working full-time as both legislators and attorneys while making only \$15,000 a year. It is a losing battle being a citizen-driven legislature given the time demands," says Rep. Baird.

For Rep. Baird, his hectic schedule will not slow down anytime soon. Over 45 interim study committees were created to research complex issues and allow additional time for public input before the next legislative session. With a regular session lasting from the beginning of January until mid-April, interim committees meeting throughout the rest of the year, and special sessions called to deal with emerging issues, the concept of a part-time legislature is outdated.

In the past, having one of its lawyers elected to the legislature was seen as a distinct advantage by law firms. But today, many firms are formula driven and are more concerned with the bottom line and billable hours than making it possible for their partners to spend time as a legislator, according to Rep. Baird. Sen. Greene agrees, noting "In days gone by, being a legislator was seen as a benefit."

Sen. Greene is quick to point out that since the media often attacks lawyer-legislators and their motives, a law firm can be unfairly subjected negative publicity based solely on the position the lawyer advocates in his or her role as a legislator. "I am a proponent of tort reform, and the media attacks my firm and me because we represent large businesses," he says.

For Sen. Kaites, despite his long and tiring hours at the legislature, his sacrifices are not nearly as great as those of his wife and infant son. He works evenings and weekends, comes in early and stays late, which

is something all lawyer-legislators say they endure.

“You just have to jealously guard your time. It’s important to set priorities, and your family becomes extremely important. Serving as a senator can be a full-time job if you let it. You have to balance all three facets of life to be effective in all parts. It is crucial to be well-rounded,” says Sen. Kaites.

Sen. Spitzer finds juggling everything difficult, but life gratifying nonetheless. He says, “I have to work very hard just to keep afloat. When the legislature is in session I have to defer most of my cases until the session is over. I have found the I.R.S. to be very flexible, cooperative and understanding in granting extensions and continuances that allow me to fulfill my obligations as a legislator.”

Sen. Greene’s early mornings and late nights at the firm have meant that he hasn’t spent the time with his family he has wanted. He feels this problem is another reason there are so few lawyers in the phase of public service. Sen. Greene will have the time to spend with his family soon, as he, too, has decided to leave the legislature. He looks forward to having the time to spend with his family and law practice.

While lawyers add expertise and some unique skills to the legislative process, lawyer-legislators are the first to acknowledge that some of the best legislators are not lawyers.

“The Arizona Legislature would not necessarily be better served to have more attorneys as legislators. It is most healthy to have a cross-section of the general population,” claims Sen. Kaites. Rep. Wong sees value in lawyers as legislators but believes that the current cross-section with ten percent of the legislators being lawyers is a fair representation.

Rep. Baird feels that while lawyers provide necessary and valuable skills in the legislature, it is not so much the profession that makes them important. “It really depends on the person,” he says with a laugh. “It really isn’t the profession but what the person believes and stands for that will make him a good legislator. The legislature is well-served having lawyers as legislators.”

Sen. Greene thinks that, generally speaking, people with legal training and background bring a tremendous amount to the process. He expresses admiration for the non-lawyers in the process, too, and feels that some of the best legislators are not professionals in the legal field.

For Rep. Updike, more isn’t always better. “It is not necessarily more beneficial to have attorneys than those from other walks of life,” says Rep. Updike. “I am more experienced in law, sometimes making more laws is not the best thing.”

While lawyer-legislators bring a great deal to the legislature, they are not necessarily the driving force. It is clear that each has made considerable contributions and their legal expertise is far more a benefit than it is a liability.

Even with the tremendous financial and personal sacrifices, Sen. Spitzer finds immense gratification being a legislator, noting that he needs nothing more than the satisfaction of knowing he did a good job for his constituents. In his opinion, the front-page stories cannot replace the “thank yous,” like the \$10 angel given to him at a party thrown in his honor for his relentless work on the charitable donations bill. Sen. Spitzer says that the angel is worth far more than extensive media coverage because it comes from people who were helped by the bill.