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LEGISLATIVE OVERSIGHT IN THE NORTH DAKOTA
STATE LEGISLATURE

by

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PhB., University of North Dakota, May 1988

An Independent Study
Submitted to
The Faculty of the Political Science Department
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for the Degree of
Master of Public Administration

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1990

This independent study submitted by George W. Belcher, Jr. in partial fulfillment of the requirements of Master of Arts (Master of Public Administration) from the University of North Dakota is hereby approved by the faculty advisor under whom the work has been done.



Advisor

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ABSTRACT

The purpose of this study is to look at the extent of legislative oversight in the North Dakota State Legislature. The State's legislators meet only once every two years for about four months and the rest of the time they are full-time private citizens and parttime legislators. Oversight of North Dakota's Executive Branch must be done by legislators who are being pulled in several directions by job, family and constituents. Oversight does not rate high on the priority list in the legislative interim.

In order to get an idea of what types of oversight are available to the State's legislators, this study compares congressional oversight to State oversight techniques. The similarities are interesting. While there is quite a bit written about congressional oversight, little study has been done on state oversight.

In order to get a handle on oversight methods available to North Dakota's legislators and the methods actually used by them a series of interviews were conducted. Chester Nelson, the Legislative Council's fiscal analyst and auditor was interviewed concerning fiscal oversight available to the State's legislators. John Olsrud, Director of the Legislative Council staff, talked about the role of the council staff in assisting legislators in oversight. And finally, fourteen of the State's legislators were interviewed to determine how they feel about oversight.

CHAPTER ONE

INTRODUCTION

Oversight by Congress is a tremendous undertaking and a seemingly impossible task. The branches of the executive spread all over the country, making oversight hard at best. The State Legislature, although on a smaller scale, has much the same problem which is made more difficult because of a parttime, citizen legislative body in North Dakota.

State programs and thus state agencies are becoming more numerous as the federal government continues to shift control of many programs to the states. Many of these programs are not new, but they are new to state government control.

In many ways, oversight is just another way to refer to accountability and that is what this study will try to pinpoint. More and more the public is demanding accountability in government, and they are making those demands directly to their elected representatives, whether they be national or state.

The study will look at the definition and scope of legislative oversight of the federal executive and the methods of oversight used by the Congress. Many of the same

methods or similar techniques are available to State legislators in North Dakota and the discussion of federal oversight methods will also include a comparison of the North Dakota methods in each given category. This will comprise Chapter Two of the study.

The decision to look at legislative oversight by Congress was made for two reasons. First, Congress is the leader in oversight techniques and an understanding of how Congress tries to oversee the Federal Executive Branch, makes it easier to relate those concepts to the state level, compare them and put them in perspective. Second, the States so often copy the federal government's way of doing things, that a look at congressional oversight seemed a natural extension of the study.

There is very little written about legislative oversight on the state level and almost nothing on legislative oversight in North Dakota. Time and money were limitations in doing any type of mail or phone survey, so interviews with state legislators were done during the 11th Biennial Summit Conference for State Officials which was held on the UND campus March 11-13, 1990. A total of 14 interviews with legislators were taped during the summit, as well as interviews with John Olsrud, Director of the Legislative Council, and Chester Nelson, Legislative Budget Analyst and Auditor.

The comments from North Dakota Legislators and John Olsrud will be looked at in Chapter Three of the study. At

that time an explanation of the method of questioning and other aspects of the interview process will be detailed.

Chapter Four will consist of a conclusion on oversight in general and more specifically its importance in the governmental process in North Dakota.

CHAPTER TWO

CONGRESSIONAL OVERSIGHT: A BACKGROUND

In the years 1940 and 1941, two respected political scientists found themselves at opposite ends on the argument of responsibility over program implementation and evaluation in the federal government. Carl Friedrich believed in administrative responsibility, while Herman Finer countered that responsibility over public policy was the legislature's.

Friedrich maintained that the administrator in the executive branch must be trusted with implementing and redefining legislative policy. "All institutional safeguards designed to make public policy . . . truly responsible represent approximations at that."¹ Friedrich was convinced that once Congress had passed the initial legislation and turned over implementation to the bureaucracy, that events moved far too rapidly for any further legislative involvement.

The continuously changing pattern of our society, requires that the administrator be responsive to whatever trends may be affecting his activities. Laws do not embody static and universal truths; they represent expedient policies which are subject to continuous change and must be so considered. Instead of administering according to precedent, the responsible administrator today works according to anticipation.²

Friedrich believed that within the parameters of the law the administrator had a duty to do everything possible to make programs work. "[T]he most far-reaching of public policies are often formed by executive agencies under the pressure of circumstance and are merely legalized by subsequent legislation."³

While Friedrich made some valid points in his argument and had many supporters, Herman Finer found the idea of non-elected public servants deciding their own course of action, with little or no congressional direction, hard to swallow. "[T]he servants of the public are not to decide their own course; they are to be responsible to the elected representatives of the public, and these are to determine the course of action" ⁴

Finer felt the most important aspect of democratic government is that the public and its elected representatives work together to force the direction which government should take and what actions administrative officials are to pursue. Most important of all, is the demand for obedience from the bureaucracy. "The devices for securing the continuing responsiveness of the official are, of course, the law courts, the procedure of criticism, question, debate, and fact finding . . . and the election of . . . officials and their recall."⁵

In many ways, the two arguments boiled down to moral responsibility on the one hand and political responsibility on the other. Friedrich believed the administrator has the

moral obligation to implement and form public policy. Finer, on the other hand, saw it completely different.

[P]olitical responsibility is the major concern of those who work for healthy relationships between the officials and the public, and moral responsibility, although a valuable conception and institutional form, is minor and subsidiary.⁶

It may be that Friedrich was right in assuming administrators control through a moral obligation and legislators, except for a very few, intervene only when it is politically expedient. However, legislative oversight takes on many forms other than the headline grabbing or constituency pleasing hearings as will be shown in this study.

It should come as no surprise that Finer found many supporters in the legislative branch. By 1946, Congress decided it was time to define oversight and who was responsible. The Legislative Reorganization Act of 1946 detailed in very clear terms what congressional oversight entailed. The act states that each standing committee will take the responsibility to,

exercise continuous watchfulness of the execution by the administrative agencies concerned of any laws, the subject of which is within the jurisdiction of such committee.⁷

One change in the official definition has been made. In the Legislative Reorganization Act of 1970, Congress substituted the words "continuous watchfulness" with the words "review and study."⁸

A better definition of legislative oversight comes from Morris Ogul. He describes oversight as, ". . . behavior by

legislators and their staffs, individually or collectively, which results in an impact, intended or not, on bureaucratic behavior."⁹ The behavior does not necessarily mean whole-scale hearings, but checking of one sort or another. It can be checking by the whole Congress or just an individual member of Congress or even a staff person. The impact can be large or amount to very little. However, whether large or small, the agency is aware that somebody is watching them.

In many ways, oversight in Congress is a continuous process that members of Congress do consciously and at times unconsciously. However, even though Congress, through legislation in 1946, 1970, and 1974, has recognized the need for oversight of the executive and has given committees expanded oversight powers, the whole idea of oversight still ranks low on the priority lists of most members of Congress.

Members of Congress see a brighter future in legislative involvement and constituent service than oversight. They tend to see the bureaucracy as a maze which they can never penetrate and which could be hazardous to one's political health.

Members of Congress will also establish close relationships with people and agencies in the bureaucracy that aggressive oversight could destroy. But at the same time they are doing a certain amount of individual oversight. Loyalty to the President can also put a damper on oversight by members of Congress. While these reasons for the lack of aggressive oversight carry some legitimacy, probably

the most obvious reason for lack of oversight is that there are no external pressures.¹⁰

Taking the premise a step further, it seems that even when there is some pressure, members of Congress and congressional committees will only become involved when they can "make rational decisions about the allocation of their scarce personal resources . . . so as to maximize gains to themselves in things which they value and minimize losses in those things."¹¹

Seymour Sher says that reasons for oversight can be to embarrass the President, to counter outside pressure, to revise regulations, to settle turf battles with the executive or to expose evidence that will damage the opposition.¹²

While this idea of oversight seems almost petty and vindictive, it is not always that way. Some oversight is done for the grander purpose of making sure the executive is toeing the line and meeting objectives laid out within authorized spending limits. However, make no mistake, oversight is almost always political in nature.

Legislative oversight became a reality as policy initiation shifted from the legislative branch to the executive branch. While the terms congressional oversight or legislative oversight tend to connote oversight by the whole legislative body, the actual oversight is much more a function of committees in most instances followed by individual investigation.

After the Legislative Reorganization Act of 1946 both the House and Senate created committees to oversee government activities. The Committees on Government Operations in each house (HCGO and SCGO), have as their power base Public Law 601, Rule, XI(H) which states that the committees will study, "the operation of Government Activities at all levels with a view to determining its economy and efficiency."¹³

The Public Law is actually a statement of intent and does not define committee action. In fact, it places three limitations on the committees' behavior. "[I]nvestigations must focus upon administrative agencies; the review is to be of policy execution not policy itself; and the committee is to investigate not legislate."¹⁴ It is with this law that the Congress finds itself dealing with the same type of vague guidelines it regularly hands the bureaucracy.

There is obviously little in the way of an overall policy toward oversight by the Congress. So, both committees, "[i]n the absence of a strong definition of larger goals . . . [have] turned to the personal needs and interests of individual members for a definition of committee concerns."¹⁵ The two committees are empowered to issue subpoenas and they are allowed to sit while Congress is not in session. There are also very few limitations on the substantive content of any study they may want to conduct, so they can cut a pretty wide path.

With all their broad investigative powers, subcommittee structures, and other special aspects of their existence,

one would believe the HCGO and SCGO would have enjoyed great success in augmenting the work of the authorizing and appropriations committees in oversight. However, that has not been the case. Lawrence Dodd and Richard Schott have detailed several reasons for the failure.

The ability to investigate policy administration and enforce proper policy implementation effectively requires the authority to write legislation The Government Operations Committees have lacked these powers. The . . . committees are constrained by the jealousies and animosities that other committees show them. Because of this hostility the Government Operations Committees become leary of any action which might hurt their funding, staff assignments, or a total disregard of recommendations.¹⁶

Over time, the two committees have tended toward consulting with other committees whose jurisdiction they may be entering, looking for compromise. They tend to be

. . . restrained in their use of publicity, [they] constrict investigations to avoid direct conflict with other committees, and rarely conclude investigations by proposing specific legislative solutions to problems they may uncover.¹⁷

It is obvious that the attempt by both houses of Congress to centralize oversight in the two Government Operations Committees has not worked. The response to this problem has been to give substantive committees oversight powers. Since the Reorganization Act of 1974, oversight has become much more the responsibility of substantive subcommittees.

This sharing of responsibility for oversight has created its own problems. "[T]he decentralization trends . . . have made the conduct of oversight even more problematic. In

fact, the decentralization of congressional committees has led to an oversight paradox."¹⁸ The paradox seems to be that while decentralization of oversight opens up more access points for members within the system, it also spreads out the power and probably weakens the ability of Congress to oversee.

Of course there are arguments for both sides. One side believes that if a committee oversees many agencies there is less chance the committee will be influenced by any one agency. However, others contend that with a decentralized subcommittee system, the agency is many times the only reason for the subcommittee's existence and therefore, control of the situation can shift to the agency thus leading to watered down or no oversight at all. A third argument holds that the oversight capabilities of subcommittees have been strengthened with larger staffs and more access to information. This argument holds that there has actually been more enthusiasm for oversight under the present committee system.

Even if there were more enthusiasm for oversight, which is highly questionable, one fact still remains:

Most studies of congressional oversight are quick to point out that among the various functions of the members of Congress, including legislative, representation, and policy surveillance, oversight ranks low.¹⁹

Members of Congress have a hard time finding any political hay in oversight. It would be unusual to see a member of Congress rely on their oversight activities to sway voters in a re-election bid.

While this picture of congressional oversight looks bleak, there is, in fact, a lot of oversight that is carried out. There are also many ways in which it is accomplished. Not all of them revolve around the committee system. The next section deals with methods of oversight on the national scene and in North Dakota.

Oversight Methods and Techniques: Comparisons

Congress has at its fingertips a whole array of methods for oversight. In this section of Chapter Two, this study takes a look at the more often used methods of congressional oversight methods with those available to North Dakota legislators.

As the research for this study unfolded, it became clear that many of the oversight methods used by Congress are also available to legislators in North Dakota in some form or another. However, in North Dakota most of these oversight methods are not used, either through ignorance of their existence or because of the parttime nature of the legislator or both.

In this section, each of the more commonly used oversight methods will be headlined followed by a discussion of congressional use and then use of the oversight method by North Dakota legislators. A portion of this section will also rely on information from Chester Nelson, Legislative Budget Analyst and Auditor for the North Dakota Legislative Council.

Constituency Service

This area of oversight is probably the most common and yet it would probably be safe to say that members of Congress do not look at this part of the job as oversight. Each member of Congress handles thousands of requests from constituents for help in solving one problem or another. "The requests range from inquiries about lost Social Security checks or delayed pension payments to disaster relief assistance" ¹

In most congressional offices, the requests or complaints are handled by staff members assigned to case work. Much of this is forwarded to Washington, D.C. by the congressional staff in the member's home district or state. In some instances, depending on the type of request or the person requesting help, the representative or senator will handle the request personally. Even if the personal touch is not given, all results and responses coming out of the respective offices give the impression that the member of Congress handled the matter personally.

The oversight comes into play because in order to take care of most of the requests, an agency of the executive must be contacted. If a problem arises in solving the situation or the agency seems hesitant to help or tries to stall, a member of Congress could bring the matter up before the proper committee or even discuss it on the floor of the House or Senate. While this rarely happens, agencies know

it could, and are usually quick to help. "Casework has the positive effect of bringing quirks in the administrative machinery to members attention."²

North Dakota legislators are faced with the same requests although in much smaller numbers. Most North Dakota legislators understand the need to respond to constituent requests. The response to constituent requests differs in two ways on the state level as compared to Congress. To begin with, North Dakota legislators do not have staff, so any dealings with executive agencies on behalf of constituents are done personally. Also, many times the response to constituents' requests by the legislator comes in the form of legislation introduced in the next legislative session.

The Legislative Council staff is used extensively by some state legislators, although many do not bother. They feel the Council staff is too busy to handle their requests. The legislators themselves use phone calls, the mail, and personal visits to departments to take care of constituent problems. This service by the North Dakota legislators works to keep them informed and creates a degree of oversight of the executive between sessions.

The Concurrent Resolution or Legislative Veto

In 1983, the U.S. Supreme Court ruled that the legislative veto was unconstitutional. While the so-called Chadha decision still stands and has not been overruled or modified,

neither has congressional practice concerning the use of the legislative veto.

In its true form, the legislative veto is nothing more than a concurrent resolution:

The term legislative veto . . . refers to the incorporation within a delegatory statute of a congressional power by concurrent resolution or simple resolution of one house to enable executive action under the statute, to approve or disapprove such action, or to terminate the statutory grant of power.³

While legislation under the terms of the Constitution is to be sent to the president for his signature or veto, the Congress has held the belief that concurrent resolutions do not fall under the constitutional guidelines. Rather, Congress has held that the resolutions are not legislative and do not have any effect outside the capitol.⁴ Up to a point, this is true. A vast majority of congressional resolutions deal with such mundane things as congratulations to someone or some organization, or problems with capitol grounds parking or maintenance.

At other times the concurrent resolutions have been used to require reports from bureaus at specific times or budget reports at times other than the yearly budget sessions. For the most part, presidents have put up with this type of oversight. At other times that has not been the case. At those times Congress is usually being very heavy handed.

[I]n some instances it has reserved power to terminate a statute or program by concurrent resolution. It has asserted power to enable or require executive action by concurrent resolution. Finally it has made administrative exercise of delegated power

subject to congressional approval or disapproval by concurrent or simple resolution.⁵

It was this kind of heavy-handedness by Congress that Chadha was to have ended. While that has been the case, it seems that the legislative veto is more sophisticated now. It is seen by both the executive and legislative personnel as a necessary function of some legislation. The following statement made in 1956 seems to hold true today.

Experience with the concurrent resolution indicates that Congress is more imaginative in fashioning tools for checking and influencing the administration of delegated powers than it is skillful and determined in employing them to hold administrators to clearly defined standards of performance.⁶

The effectiveness of the concurrent resolution or legislative veto as an oversight tool is still in question.

The North Dakota Legislature does not use the legislative veto. That is to say, not in the way of Congress. Much the same effect, however, is created with Budget Section authorizations.

The Budget Section is a legislative interim committee consisting of the Lieutenant Governor, the leadership of both houses, and selected members of the appropriations committees in the House and Senate. While there is some question as to the constitutionality of the Budget Section, the fact remains that it has statutory powers within the North Dakota Century Code and extra authorization powers granted during each biennial session of the legislature.

North Dakota Century Code (NDCC) 50-06-05.1(18), provides that the Department of Human Services may terminate

food stamp programs under certain conditions, but only with Budget Section approval. NDCC 54-16-01 allows Emergency Commission transfers from the state contingency fund in excess of 500-thousand dollars only with approval of the Budget Section.⁷

Examples of legislative delegation of approval also abound. During the 1987 legislative session, House Bill 1005 provided for appropriations of up to one-million dollars in gifts for construction of a facility for the Agriculture Extension Service, but only with Budget Section approval. And Senate Bill 2471 during the same session, required approval of the Budget Section before any spending of funds for a child welfare research bureau at the University of North Dakota would be allowed.

While withholding of approval by the Budget Section is rare, the reality of the concept is that some major spending, authorized by the legislature, could in fact be held from the executive branch by the Budget Section. A potentially powerful oversight tool exists with the Budget Section. The power to hold the executive accountable for actions in many areas rests in the collective hands of the members of the Budget Section.

The question of the constitutionality of the Budget Section comes from delegation of authority. Does the Budget Section constitute illegal delegation of authority? While this study will not pass judgment one way or the other, those who question the legality of the Budget Section cite

the State Constitution. Basically the constitution says that all matters of fiscal policy in North Dakota must be approved by both houses of the legislature in a vote of all the members of the legislature. The Budget Section and with it the Emergency Commission have the power to make fiscal changes in the interim without a vote of all the members of both houses.

Hearings and Investigations

Hearings and investigations are the traditional oversight techniques used by Congress. Hearings in Congress are held on a regular basis. Representatives of departments or agencies in the executive are called to testify before subcommittees or authorization committees all year long. They testify on matters of implementation of programs, pending legislation which may affect the department or agency, or most often in defense of their budget requests.

Investigations are held when Congress becomes aware of possible wrongdoing in the executive branch or mismanagement of programs or program funds by a department or agency. Legally, investigations by Congress are to be held with the idea of future legislation in mind. However, this is not always the case as evidenced by the McCarthy hearings in the early 1950s.

While most hearings tend to escape a lot of public scrutiny, many investigations become national news. The

most recent examples are the HUD mismanagement hearings, Iran-Contra, and of course Watergate.

It is in the regularly scheduled congressional committee hearings that the bulk of legislative oversight is conducted. Since the Reorganization Act of 1974, the chances for increased oversight have become more plentiful. "[I]n committees where subcommittees are accorded a prominent role in policy-making, there will be a greater opportunity for oversight activity than is the case in committees where subcommittees play a more restricted role."⁹

The increase in staff accorded the subcommittees has also had an influence on strengthening the idea of congressional hearings as oversight tools. "Committee staff members can be used as effective communications links with administrative agencies . . . as a means of transmitting congressional views to specific agencies."¹⁰ The flow of information therefore returns from the agencies to the committee members through the staff.

It seems that the more active and aggressive the committee or subcommittee is, the greater the amount of oversight activity. However, all too often, the important senior members of a committee or subcommittee who are, "in the best position to make the committee active in oversight, find that their priorities lie elsewhere and therefore devote little of their valuable time to the committee, or oversight."¹¹

Time is a problem for all members of Congress. Members are constantly being pulled in several directions, with each individual pull demanding top consideration. To properly conduct oversight, a member of Congress must allocate a lot of time, time the member just cannot seem to find. So even though congressional hearings are an on-going oversight method, for the most part the oversight is superficial unless a major discrepancy or possible wrongdoing comes to light.

The North Dakota Legislature conducts full-blown hearings for approximately three-and-one-half months every two years. Other hearings during the interim are also held. Investigations by state legislative committees are rare.

The standing committee hearings occur during the biennial sessions as they hear testimony on the 12-hundred-plus pieces of legislation that are considered during the sessions. A vast majority of these bills are introduced by legislators either in their own interests, for constituents, or for local interest groups. The rest of the legislation consists of agency bills, also introduced by friendly legislators. It is during consideration of the agency bills that the legislative committee members get the time to question agency personnel and glean information about agency operations and programs.

The appropriations committees of both the North Dakota House and Senate probably dig deepest into the operations of the executive, but time is their enemy. In a three-and-one-

half month span there just is not enough time for probing oversight.

The legislative interim committees are charged with investigating possible legislation for the next session and in the course of their hearings will conduct some oversight of executive agencies. However, these committees only meet four or five times during the interim and once again there is limited time for oversight.

As mentioned earlier, the interim Budget Section committee has the potential for oversight through the withholding of approval for funds. An arm of the Budget Section is the Legislative Audit and Fiscal Review Committee, with members appointed by both houses. The committee is chaired by the Lieutenant Governor. The North Dakota Century Code, section 54-35-02.2, states in part:

It is the duty of the Legislative Audit and Fiscal Review Committee to study and review audit reports as selected by the committee from those submitted by the State Auditor, confer with the auditor, and deputy auditors in regard to such reports, and when necessary to confer with representatives of the department, agency, or institution audited in order to obtain full and complete information in regard to any and all fiscal transactions and governmental operations of any department, agency or institution of the state.¹²

The statute also directs the Attorney General to conduct further investigations and prosecute offenders if it is deemed necessary and if the committee so requests.

However, in the normal course of business the audit and fiscal review committee will take the reports, review them briefly, and accept them with few questions and little or no

comment. As with congressional hearings, the oversight conducted by the audit and fiscal review committee is superficial. The committee does not take enough time or schedule enough meetings during the interim to scrutinize every audit report. Once again, there is a very powerful oversight tool in the audit and fiscal review committee, if the legislature chose to use it, and took the time to do so.

Finally, the fact that investigating committees are not common in the North Dakota Legislature, does not mean the legislature does not investigate by committee. Again, turning to the North Dakota Century Code, section 54-03.2-03, which reads in part:

An investigating committee may exercise its powers during sessions of the legislative assembly, and also in the interim . . . when so provided by law or by the motion, resolution, or statute by which the committee was established or from which it derives its investigatory powers.¹³

The committee's purposes, power, duties and length of establishment must also be stated, as well as the subject and scope of the investigation. The investigating committee, once formed, has the power to issue subpoenas. Once again, it is a little used means of oversight, but one that is available nonetheless.

Authorization and Appropriations

In the matter of authorization, both the U.S. Congress and the North Dakota Legislature operate the same. The difference probably lies in the amount of time that is taken to look into each program by the authorizing committee.

In Congress, authorization is done in the substantive committees after receiving a subcommittee's mark-up of a bill. Congressional committees have staff assigned to them and more time to get a good overview of the agency or department and its fiscal requests before recommending program authorization. The full committee then relies on the report from the subcommittee in recommending or not recommending program authorization.

In the North Dakota Legislature, the subcommittee system is basically non-existent. The standing committees do the authorizing after hearing all the testimony and looking over the figures. There is very little time and almost no staff available for an in-depth oversight of the agency or department seeking authorization.

Any bill reported out of committee (and all of them are) in the North Dakota Legislature, goes back to the floor first and then if there is a fiscal note attached which exceeds five thousand dollars, the bill is re-referred to the Appropriations Committee of that house for their consideration.

As an oversight tool, authorization is a very poor method in the state legislature and not much better in Congress. Appropriations, however, are very important in both Congress and the North Dakota Legislature.

Congressional appropriations committees can increase or decrease funding or maintain the same levels. Through this, they can exercise immense power in shaping public

policy.¹⁴ The same holds true for the appropriations committees in the North Dakota Legislature.

Congressional appropriations committees, like other substantive committees, have subcommittees. This means that authorization bills are farmed out and get a closer look. It seems that one of the best ways to oversee any executive branch agency or department is to look at their spending patterns in relation to the effectiveness of their programs and their requests for continued funding. Many hard and pointed questions can be asked and often are in appropriations hearings.

For the North Dakota Legislature the ability of the appropriations committees to dig deeply into agency activities is limited, again because of time. However, unlike other standing committees which meet either three times or two times a week during the session, the appropriations committees meet five days a week. This, of course, allows the appropriations committees more time to dig and question, but on the down side, it also allows more time for testimony.

In recent sessions of the North Dakota Legislature, the House Appropriations Committee has experimented with dividing itself into three subcommittees to better oversee the appropriations process. These subcommittees hear testimony separately and then report back to the full committee with their recommendations. The jury is still out as to how effective this method has been. The State Senate

Appropriations Committee has not been able to follow suit because they are a much smaller body.

The appropriations committees in Congress and the North Dakota Legislature are some of the best oversight tools available to the full legislative body. This is very true with the State Legislature, as it conducts its business in such a short period of time.

The General Accounting Office (GAO)

The GAO is Congress's premier field investigator. The agency sends congress some 1,000 reports annually, addressing ways to root out waste and fraud in government programs and promote program performance.¹⁵

The General Accounting Office is headed by the Comptroller General who is appointed for a single 15-year term with the advice and consent of the Senate. The most important characteristic of the GAO is that it works only for Congress.

The work of the GAO in many cases supplements reporting requirements of agencies, which are written into their authorizing legislation. These reports from the agencies also number in the thousands and tend to be very vague and general for the most part. The reports are also far too numerous for members of Congress to digest in total. At its best, ". . . the report requirement encourages self-evaluation by the executive branch and promotes agency accountability to Congress."¹⁶ Therefore, the work of the GAO is a very important backup method of oversight for the Congress.

The GAO has seen a couple of major changes in its duties in the past 15 years. In 1975, the Program Analysis Division was created followed five years later by the Institute for Program Evaluation. These new additions came about as a result of the 1974 Congressional Budget and Impoundment Act.¹⁷ With these new additions, ". . . GAO has created the potential for serving as an evaluation broker, planner, and conduct agent for congressional committees."¹⁸

The program evaluation duties of the GAO provide a "special type of oversight that has been specifically provided for in many agency appropriations bills since the late 1960s and in the 1974 Congressional Budget and Impoundment Control Act."¹⁹ This oversight approach is done through the use of surveys, cost-benefit figures and other modeling and efficiency studies. Obviously, the congressional staff has little time or resources for these studies. Thus the GAO takes on added importance in legislative oversight by Congress.

The North Dakota Legislature does not have a GAO to rely on, but a combination of existing agencies has created a similar oversight tool. The two agencies are the Legislative council and its staff of budget analysts and auditors and the State Auditor, which is an elected executive position.

To get an expert's outlook on this form of legislative oversight in North Dakota, Chester Nelson, the Legislative Budget Analyst and Auditor for the Legislative Council was

interviewed. Along with the State Auditor and Nelson's staff of four budget analysts, Nelson adds the Legislative Audit and Fiscal Review Committee as a player in this form of oversight. "We have the Legislative Audit and Fiscal Review Committee which looks at the audit process and as a part of that, there should be a strong look at compliance with legislative appropriations and legislative intent."²⁰

Across the country, many states have moved the auditing function to the legislative branch. In June, 1990, the voters of North Dakota will have a chance to change the State constitution and move the State auditor's office from the executive branch to the legislative branch. Nelson does not believe this will create any real change. "If it were not for the legislature in the audit process, I don't think the personnel in the auditor's office would feel they have a constituency."²¹

Nelson says that over the last 20 years, almost all changes in the audit process have been initiated by the legislative audit and fiscal review committee. These changes have been made, even with the fact that the actual audits are done by the executive branch.

In terms of major direction, in terms of what the audits (from the State auditor) produce and the use of information from the audits, that is really under the control of the legislative branch right now. The thrust of the audit program is really subject to review by legislative staff.²²

While the GAO conducts performance audits of agency programs, North Dakota is still struggling with that. Nelson

says it is not because of lack of interest. A resolution in the 1971 legislative session directed the legislative council to look at performance audits. According to Nelson, money, staff, and time have prevented implementation of any on-going performance audits.

However, in another area the North Dakota Legislature will soon be receiving better insight into the operations of state government, and thus better oversight of those operations. The new insight will come in the form of comprehensive annual financial statements of the state. They will be issued for the first time beginning with fiscal 1991. The issuance of this statement will conclude a twenty-year development process in this area.

All of the information gathered by the State auditor's office, the legislative budget analyst's office and the legislative audit and fiscal review committee is made available to state legislators. In the interim this is a powerful oversight group for the legislature. "We live in a state where the job gets done structurally, it may be one place or another, but both in the budget area and the accounting area, the legislature has a strong influence."²³

However, as in Congress, state legislators will only see the oversight value of all the information if they take time to digest it. It would seem logical to expect that some will but most will not.

These are some of the more important and effective ways the Congress and the Legislature have to oversee the executive

branch. Other methods include informal contacts between legislators and the bureaucracy which was mentioned earlier and goes on quite frequently both on the national and state levels. There is Senate confirmation which is used with some effect in Congress, but with little effect in the North Dakota Legislature. Because the legislature meets only four months every two years, most of the governor's appointments which require Senate confirmation are made during the interim. Therefore, once the Senate is back in session, confirmation is a pro forma matter. There is also individual oversight which goes beyond informal contacts. This form of oversight was practiced most prominently on the national scene by Wisconsin Senator William Proxmire when he issued his "Golden Fleece" awards.

In North Dakota, the practice of individual oversight is used much more often. As stated earlier, North Dakota legislators are not blessed with individual staff. Many are reluctant to burden the Legislative Council staff and therefore are much more apt to visit or write department heads directly and do their own digging for answers. Many consider this just part of the job and really do not look at their actions as oversight. Rather, they will likely call it constituency service, which this study has labeled as an oversight tool.

In Congress, except for the occasional Proxmire, individual oversight is hit and miss at best, and usually

done only if the member of Congress can make some political hay back home or advance his or her reputation in Congress.

This study will now turn its attention to legislative oversight as seen through the eyes and experience of fourteen current North Dakota legislators. Before the study looks at the responses of the legislators, it will take a look at the legislative council. It has been mentioned throughout the early part of this study and it seems only fair to explain its functions. This information was gathered from an interview with the legislative council director John Olsrud.

CHAPTER TWO
END NOTES

CONGRESSIONAL OVERSIGHT: A BACKGROUND

¹Carl J. Friedrich, "Public Policy and the Nature of Administrative Responsibility," Public Policy vol. 1 (1940): 3-24 in Francis E. Rourke, Bureaucratic Power in National Politics, 3rd ed. (Boston, Massachusetts: Little Brown and Company, 1978), p. 405.

²Ibid., pp. 407-408.

³Ibid., pp. 405-406.

⁴Herman Finer, "Administrative Responsibility in Democratic Government," Public Administration Review 1 (Summer 1941): 335-350 in Rourke, Bureaucratic Power in National Politics, pp. 411-412.

⁵Ibid., p. 416.

⁶Ibid., p. 421.

⁷Morris S. Ogul, Congress Oversees the Bureaucracy: Studies in Legislative Supervision (Pittsburgh, Pennsylvania: University of Pittsburgh Press, 1976), p. 5.

⁸Bernard Rosen, Holding Government Bureaucracies Accountable (New York, New York: Praeger Publishers, 1982), p. 54.

⁹Ogul, Congress Oversees the Bureaucracy, p. 11.

¹⁰Seymour Scher, "Conditions for Legislative Control," Journal of Politics, 25 no. 3 (August 1963): 389, in Leroy N. Rieselbach, The Congressional System: Notes and Readings (Belmont, California: Wadsworth Publishing Company, Inc., 1970), p. 389.

¹¹Ibid., p. 392

¹²Ibid., p. 389.

¹³Thomas A. Henderson, Congressional Oversight of Executive Agencies: A Study of the House Committee on Government Operations (Gainesville, Florida: University of Florida Press, 1970), p. 9.

¹⁴Ibid., p. 9.

¹⁵Ibid., p. 10.

¹⁶Lawrence C. Dood and Richard L. Schott, Congress and the Administrative State (New York, New York: John Wiley and Sons, 1979), p. 167.

¹⁷Ibid., p. 168.

¹⁸Ibid., p. 173.

¹⁹Ibid., p. 215.

OVERSIGHT METHODS AND TECHNIQUES: COMPARISONS

¹Walter J. Oleszek, Congressional Procedures and the Policy Process, 2nd ed. (Washington, D.C.: CQ Press, 1984), p. 235.

²Ibid., p. 235.

³Cornelius P. Cotter and J. Malcolm Smith, "Administrative Accountability to Congress: The Concurrent Resolution," Western Political Quarterly 9 (December 1956): 956.

⁴Ibid., p. 955.

⁵Ibid., p. 959.

⁶Ibid., p. 956.

⁷Report of the North Dakota Legislative Council: Fifty-first Legislative Assembly (Bismarck, North Dakota: State Printing Office, 1989), pp. 26-27.

⁸Ibid., pp. 26-27.

⁹John F. Bibby, "Committee Characteristics and Legislative Oversight of Administration," Midwest Journal of Political Science 10 (February 1966): 78-98, in Rieselbach, The Congressional System, p. 418.

¹⁰Ibid., p. 420.

¹¹Ibid., p. 428.

¹²North Dakota Century Code, vol. 10B (Charlottesville, Virginia: The Michie Company, 1989), pp. 266-267.

¹³Ibid., p. 59.

¹⁴Oleszek, Congressional Procedures, p. 229.

¹⁵Ibid., p. 233.

¹⁶Ibid., p. 233.

¹⁷Franklin M. Zweig and Keith E. Marvis, eds., Educating Policymakers for Evaluation: Legislation. vol. 9 (Beverly Hills, California: Sage Publications, 1981), p. 46.

¹⁸Ibid., p. 46.

¹⁹Oleszek, Congressional Procedures, p. 234.

²⁰Chester E. Nelson, Jr., interview by author, Tape recording, Grand Forks, North Dakota, 13 March 1990.

²¹Ibid., 13 March 1990.

²²Ibid., 13 March 1990.

²³Ibid., 13 March 1990.

CHAPTER THREE

THE LEGISLATIVE COUNCIL AND STAFF

The Legislative Council is described by many legislators as the interim "board of directors" for the North Dakota Legislature. It is the eyes and ears of the legislature during the time the body is not in session. The legislative audit and fiscal review committee, the Budget Section, and the administrative rules committee all report to the legislative council. The administrative rules committee will be discussed later in this chapter. For forty-five years, the Legislative Council committee and its staff have attempted to oversee the executive branch of North Dakota government.

The Legislative Council committee was created during the 1945 legislative session. The council membership is detailed in NDCC section 54-35-01, which reads in part:

The Legislative Council shall consist of the majority and minority leaders of the House and of the Senate plus five senators and six representatives to be chosen biennially before the close of each regular session [T]he speaker must by virtue of his office be one of the three members appointed from his faction. In the Senate the council members must be . . . three from the majority faction and two from the minority faction.¹

The Legislative Council committee's powers and duties are listed in NDCC section 54-35-02. There are several important oversight provisions in this section of the code which read in part:

To study, consider, accumulate, compile, and assemble information on any subject upon which the legislative assembly may legislate, and upon such subjects as the legislative assembly may . . . authorize or direct, or any subject requested by a member of the legislative assembly; to collect information concerning the government and general welfare of the state . . .; to study and consider important issues of public policy . . .; [and] to prepare bills and resolutions for consideration of the succeeding legislative assembly.²

The section also allows the council to solicit help from other members of the legislative assembly and form committees to help them. The council also has subpoena power.

Membership on the legislative council is highly prized and at times legislators will actively campaign within the party caucus for an available council appointment. A legislator appointed to the council serves from the end of one legislative session until the end of the next legislative session. The legislator may be reappointed to the council indefinitely. If a legislator resigns or is not reelected, the member appointed to fill the vacancy must come from the same party and sits only until the end of the next legislative session. The members of the council also serve as the chairmen of the several interim committees between sessions.³

The Council Staff

While the legislative council committee of fifteen is prestigious, it is only as good as the legislative council staff. The staff consists of a group of attorneys and accountants who research, gather, and distribute information to the committee and the rest of the legislators.

The 1945 legislative council committee was the only interim committee of the legislature. Its basic purpose was to get a headstart on the next legislative session. In the 1949 session it was decided the committee should have some staff and a director and a secretary were hired. After quickly going through three directors, the committee hired Emerson Murray. Murray would remain as director for twenty-five years and would oversee the growth of the council to its current size of fifteen.

The major addition to the legislative council staff during Murray's tenure came in 1965 with the creation of the legislative budget analyst and auditor. Since 1965 the council staff has consisted of all attorneys and certified public accountants. Emerson Murray was succeeded by John Graham in 1975 and Graham was succeeded in 1982 by the council's current director, John Olsrud.⁴

In a recent interview with John Olsrud for the purposes of this study, he was asked how much of the staff-work is concerned with legislation planned for the next session and how much is oversight of existing statute. "Most of what we do is directed to the upcoming legislative session. Most

of the studies we are involved with, involve looking at prospective legislation."⁵ However, Olsrud says there are two committees which are directly involved with looking at the executive and which are staffed by the Legislative Council staff.

One is the legislative audit and fiscal review committee that was created in 1965. That committee has audit review. The state auditor or private auditors who do auditing of state agencies come before that committee and report on what they have found. The other committee that is involved with reviewing the executive branch is the administrative rules committee. This committee is about 12-years old. They look at all the administrative rules where the executive branch has taken statute and interpreted them and promulgated rules.⁶

The administrative rules committee is the legislature's way of checking if the executive is following legislative intent in interpreting and implementing legislation. The staff attorneys of the council become very important to the legislature in this process. Olsrud says every once in a while something the executive has done administratively does not set well with the legislators. "I don't think very much comes from misconstruing. Although we have had some experiences where the executive branch is doing something legislators don't think was intended so they will recommend the laws be amended."⁷

When asked whether the council staff should be more directly involved in oversight, rather than just supplying information and advice to committees, Olsrud was somewhat reticent in his answer.

That is hard to say. I'm not aware of any glaring areas where additional oversight is needed. But I have 159 bosses and I'm sure a number of those legislators would have their own ideas about different aspects. But, I'm not aware of any overwhelming single area where there is a need for more oversight.⁸

Much of Olsrud's hesitance in answering that question comes from the mission of the council as a non-partisan arm of the legislature. Olsrud is conscious of this at all times, and the council staff goes out of its way to maintain that neutrality. Olsrud says the non-partisan nature of the council staff is emphasized when the media is seeking information.

We are available and will always help in providing background information. I [Olsrud] understand, and the staff has to understand, there are times when we are the story, so then we are quotable sources. But if we are providing background information, we usually ask that they [media] not quote us, simply because that makes us a part of the story. If most members of the press understand that, then we will be far better sources of information if they cooperate. I don't think it's asking too much of them.⁹

Olsrud says that in most cases they try to lead the press to a source by giving them a name of a legislator to contact or dropping a series of not-so-subtle hints to move them in the right direction.

As State Government has become more complex, the topic of the annual sessions comes up often. Up to this point, opposition from those who firmly believe in a parttime citizen legislature, has blocked any move to have the legislature meet every year. The idea of annual sessions does not sit well with John Olsrud. He feels they would create great problems with the legislative council staff.

It would be very hard to operate the way we do now because there is so much pressure on the staff during that period of time and people virtually give up their private lives for about six months. If we were to do that every year, it would be a tremendous human toll. The way it is now, we tell people we expect that of them. We couldn't do that if that were to happen every year.¹⁰

Olsrud is referring to the fact that the legislative council staff researches and drafts a majority of the bills considered during the session. They also must check all bills which are drafted elsewhere for style and form. Beyond that, the legislative council staff has the duty of "staffing" all committees of the legislature. This means that a member of the council staff is in attendance at all times to tape the proceedings, take notes, and answer procedural questions.

Olsrud says that each session of the legislature creates more work for the legislative council staff. He says in recent sessions joint legislative-executive committees have been established which are staffed by the council. The workload continues to grow, but Olsrud is hesitant to request an increase in his staff.

I try very hard not to be an empire builder. One thing that I am not doing is pushing for more power or more authority or more staff or what have you. What I see happening though, is there is a natural tendency as government gets more complex there are more and more demands on the legislature and there are more and more demands on the legislative council staff because of that. So the empire is being built by the legislature, so to speak.¹¹

The legislative council staff is an extremely important tool for oversight by the legislature as a whole and for

each individual legislator. However, the council staff's workload and small size has also become a hindrance to its use as an oversight tool.

While the legislators are aware of the benefit for oversight the council staff gives them, they are hesitant to use the staff because they feel the staff does not have time. Therefore, the obvious result is that the legislator uses other less effective means of oversight and lets a major oversight tool go untapped.

The preceding observation comes from the interviews with fourteen current members of the North Dakota Legislature about their views on legislative oversight. It is to those interviews that this study now turns.

The Legislator's Viewpoint

So far in this study, oversight by Congress has been discussed, the oversight methods available to members of Congress have been compared with similar methods of oversight available to North Dakota legislators, and the North Dakota Legislative Council's oversight importance has been discussed. Now it is time to hear from members of the North Dakota Legislature about their feelings toward legislative oversight.

To accomplish this, fourteen current legislators representing the Senate and the House were interviewed during the 11th Biennial Summit Conference, March 11-13, 1990, which was held on the campus of the University of North

Dakota. The interviewees were not randomly selected in advance. Those interviewed were legislators who were available during coffee and lunch breaks or at the end of each day's seminars. Some were also attending interim committee meetings scheduled at the same time and they were available during breaks. The time for interviewing was limited, but effort was made to find a good cross-section of legislative experience among those legislators interviewed.

Of the fourteen legislators interviewed, six are republicans, eight are democrats. Four are women legislators. The average years of service in the House or Senate or both through the November 1990 elections is 9.7 years. The range was from two years to twenty years. Six of the legislators serve in the North Dakota State Senate and eight serve in the State House.

State Senators

Corliss Mushik (D-Mandan), Dan Wogsland (D-Hannaford), Wayne Stenehjem (R-Grand Forks), Jack Ingstad (R-Grand Forks), Art Todd (R-Jamestown), and John Olson (R-Bismarck).

State Representatives

Dan Gerhardt (D-Williston), Judy DeMers (D-Grand Forks), Bill Skjerven (D-Park River), Janet Wentz (R-Minot), Charles Mertens (D-Devils Lake), Roy Hausauer (R-Wahpeton), Diane Ness (D-Underwood), and Jay Graba (D-Grand Forks).

Five questions were originally planned for each interview. However, it was apparent from the first interview that the answers to some questions were overlapping into other questions. As an example, the question asked about the legislator's individual oversight methods many times also answered the question concerning their use of the legislative council and their feelings about the council's oversight powers. So, while all five questions were not always specifically asked in each interview eventually all five questions were answered in every interview.

To summarize the interviews, each question will be used as a heading and a summary will follow and quotes from some of the legislators will be used to emphasize the viewpoints expressed in relation to each question.

1. What is the major oversight method available to the legislature as a whole while in or out of session?

There was very little hesitation on the part of any of the legislators in answering this question. All fourteen felt the appropriations and budget committees were the major oversight tools available to the legislature as a whole. The legislators felt that having the ability to question the executive agencies about program spending and planning during the session, gave them some idea of what they should be looking for during the interim in terms of oversight. However, the legislators also took advantage of the question to expand on their answers. Some mentioned the Legislative

Council staff and many used the question to voice support for annual sessions as an oversight tool. The annual session question will be dealt with separately later in this part of the study.

It is appropriations and budgeting that take center stage with the legislators as an oversight tool during the session. Representative Jay Graba of Grand Forks is a member of the House Appropriations Committee:

We [the appropriations committee] are the budgeters for the State even more so than the governor. He gives us a plan, but the end result is what we send out, not necessarily what the governor requests. So I guess we are certainly the biggest oversight committee.¹

Graba feels that because it is the appropriations committee which is determining the final budget numbers for each agency, a certain amount of control over agency actions is gained.

Senator Art Todd of Jamestown said, "The budget process is the primary vehicle the legislature has to oversee the executive."² Senator Wayne Stenehjem of Grand Forks echoed those sentiments. "The tool that we have for oversight largely would be the appropriations process and within that, the legislative statutory power to get things done."³

Representative Judy DeMers of Grand Forks saw two areas of oversight for the whole legislature.

I think two primary areas are the budget power; if you don't fund them they can't do it. And secondly, the lawmaking power. Obviously if there is something you really don't like you can go in and try to change it through the legislative process.⁴

However, DeMers also sees a flip side to the issue. "On the other hand, I think that the executive tends to basically do what they want to do between sessions."⁵

Finally, Representative Janet Wentz of Minot had the most interesting answer to the question. After immediately answering that the appropriations committees and Legislative Council committee and staff were important in legislative oversight, she paused and then added:

I think incumbency is very important to the legislature. We are a parttime citizen legislature and it takes us a number of sessions to learn the process and become familiar with the agencies and all of those funding sources.⁶

Not the kind of answer one would expect, but one which probably carries a lot of truth.

2. What oversight tools do you use as an individual legislator?

The answers to this question were not as cut-and-dried as the first question. The legislators cited constituency service, use of the Legislative Council staff and its reports, and the tracking of legislation in which they have taken a personal interest as means of personal oversight. Constituency service for North Dakota Legislators amounts to following up on concerns about state programs that are affecting individuals back home. This takes up a lot of the legislator's time due to the lack of any personal staff. The Legislative Council staff issues reports throughout the interim which most legislators try to read. Personal

interest in certain areas of government is usually acquired from service on a committee that handles that issue during the regular session. The most interesting revelation by the legislators in answer to this question was the reliance on the media as an oversight tool.

For parttime legislators, their constituency becomes very important to them in keeping track of legislation and its implementation. What really concerns the people in the district is the message brought to the legislator by his or her constituency. It is a constituent's concerns which can move a legislator to take a closer look at executive agency policies.

A lot of times, the ones [programs] I tend to focus on the most are the ones I get complaints from constituents on. All of a sudden you find yourself in one area or another trying to figure out why a law is being implemented when you know the intent was quite a bit different.⁷

Representative Bill Skjerven of Park River feels constituent service is probably the best oversight tool a legislator has.

When I really get involved is when some constituent comes with some complaint. Then my solution has always been that I go to that agency or department head and start asking questions. I believe that is the most effective thing a legislator can do.⁸

The legislators also believe the legislative council is a good tool to use in individual oversight. "You can always go to the Legislative Council [committee] and have a special committee created to examine problem areas."⁹ While this kind of use of the legislative council seemed extreme

for the other legislators, others did say the council helps keep them informed. "The legislative council really helps the legislature be as year round as possible. It is our major reporting agency."¹⁰ Senator Art Todd feels the Legislative Council committee and staff are invaluable.

The Legislative Council [committee and staff] does have a lot of oversight power over the executive branch. The Legislative Council staff is extremely helpful, not only to the interim committee process and the flow of information, but it is also extremely beneficial to individual legislators in dealing with constituents.¹¹

State Senator Dan Wogsland of Hannaford had nothing but praise for the flow of information from the Legislative Council staff for use in oversight. He is also amazed that so much information can be generated by so few people. "The council is just excellent. They are understaffed and they are underpaid and they need more people and there is no question about it."¹²

State Senator Corliss Mushik of Mandan feels that the lack of personnel in the council is a real problem. "The council is a very busy body. They really don't have the time to deal with individual legislators in this kind of business [oversight]."¹³

Most legislators, if they are in office long enough, will find themselves taking an interest in one or two issues and therefore dealing most closely with the executive agencies in charge of the programs surrounding those issues. These agencies then take on more importance to the legislators. As a result, the bulk of the legislator's oversight

activities will revolve around the agencies administering those programs in the legislator's special sphere of interest.

Freshman Representative Diane Ness of Underwood is a member of the House Education Committee. Since the end of the session she has found that she focuses her attention more toward education issues. "I'll pick a couple of areas where I like to keep track and the rest of it I have no idea. It's just too hard to keep in contact with everything when you only meet once every two years."¹⁴ Senator Dan Wogsland also believes each legislator strives for expertise in certain areas. "I think each legislator has got his niche and watches that niche pretty closely."¹⁵

As was mentioned earlier, it was surprising how many of the legislators mentioned the media as a valuable oversight tool. Six of the fourteen legislators mentioned the press as a source of oversight material or as a catalyst which can move them to check-up on an agency or department.

State Senator Jack Ingstad of Grand Forks stated the case for the media most strongly. "The media is probably the biggest overseer of the executive branch of government. They are the ones that keep the public and the legislators informed as to what is going on."¹⁶

Other comments came from Senator Todd: "The press keeps the agencies pretty much in-line"; Representative Wentz: "I certainly read everything that the news media prints and one picks up problems in there"; and Senator Olson: "Quite often media stories may cause action."¹⁷

While the media was never mentioned as an oversight tool for Congress, it would seem that in a small state like North Dakota, the state legislators rely on the media quite often. This is not all that surprising if one considers North Dakota's liberal open records and open meetings laws, which allow the press the access to and the ability to write about almost anything that goes on in State government. With no staff, and very little time spent in Bismarck it seems logical that the State's legislators would turn to the press to help them in oversight of the executive branch during the interim.

Before leaving this question of individual oversight, the study would be remiss if it did not mention the comments of the one legislator out of the fourteen that is not all that concerned with individual oversight on his part. Senator Jack Ingstad says his input is very little and he is satisfied with the information he receives from Legislative Council committee and staff.

I may be different than most. I feel comfortable with the executive branch of government. They are elected by the people just like the legislature. I am one that feels they should be given some leeway in the decision making process. We are not in Bismarck most of the time and I feel comfortable for the executive branch to be making decisions for us within the framework of our legislation that we pass each session.¹⁸

3. Should the legislative council staff have more power?

All fourteen of the legislators interviewed felt the Legislative Council staff was a valuable oversight tool

and that their information and research was tremendous. One would think then that the legislators would want a council staff with even more power. However, that was not the case in these interviews. Only two of the legislators felt the council staff should be more powerful.

One who feels that the legislative council staff is fine with the power that it has is former House Speaker and twenty year veteran of the House, Roy Hausauer, of Wahpeton. Hausauer believes, "The staff has enough power to enter the agencies and is very knowledgeable. They are the backbone of the legislative council committee."¹⁹

Senator Wayne Stenehjem left no doubt about his feelings on the matter of the power of the legislative council staff.

They are resource people and drafting people. They do not have nor do they ever attempt, that I am aware of, to exercise any influence over the executive branch. Nor could they. They just don't have the statutory authority and that's not what they are set up for.²⁰

Representative Charles Mertens of Devils Lake, current chairman of the legislative council committee, begs to differ with Stenehjem. "We've got some tools in place through the legislative council [committee]. We've got the audit and fiscal review committee and the other strong one is the Budget Section. It has a lot of statutory authority."²¹ While Mertens is referring to the legislative council committee, by inference he is also including the staff. The powers of the council committee are visited upon the staff. It is the staff that carries out the council's wishes and supplies it with information.

Senator John Olson believes the legislative council staff has plenty of power. However, according to Olson, "There is a general reluctance by the legislative council to get involved."²²

The reluctance on the part of the legislative council staff probably stems from its non-partisan mission which was mentioned earlier. Representative Judy DeMers also sees this reluctance as a drawback while still feeling that the council staff could use more power.

I would like to see it [council staff] strengthened. I think part of the great value is that they are non-partisan. That is also part of the great problem. They bend over backwards, in terms of the message about what is going on, not to bias that message with any kind of particular focus. Sometimes it takes awhile to understand what they are sending out. So, I would like to see it be more investigative.²³

While some feel some changes could be made and others have differing viewpoints as to the council's duties, most seem to feel that the current power base of the council is enough.

4. As a legislator, do you find certain agencies harder to oversee than others?

The resounding answer to this was "yes" and the Department of Human Services led the way as the hardest agency to oversee. Also mentioned were the Departments of Higher Education and Public Instruction, and the Highway Department.

This question created one or two sentence answers for the most part. State Senator Corliss Mushik summed up the

problem with human services. "They have such a myriad of programs that there is absolutely no way that I as an individual who does not work in the department or work putting that budget together can really understand."²⁴

State Senator John Olson also believes that the size of the department dictates how hard the department is to oversee.

It's always easier to pick on the little guy because it is not too difficult to find out what he is doing and how he is doing it. It's more difficult to pick on the big ones like human services, or higher education or the highway department, because there are so many programs and so many areas of regulation. It's almost impossible for any individual to have a handle on all of that.²⁵

Representative Jay Graba does not seem to see a problem with any agency, large or small. "I have always felt that departments have all been accessible and answered my questions."²⁶ Senator Dan Wogsland was a little more philosophical in his answer. "There are a lot of different agencies that are more accessible just simply because the people in charge are more accessible."²⁷

The greater the number of funding sources and the greater the number of money transfers seems to dictate which agencies legislators consider hardest to oversee.

5. When you leave the Capitol after three-and-one-half months in session, do you feel like you are turning the fox loose in the hen house?

This question was designed to be a "fun" question, but also one that would pull together all the legislator's

thoughts about oversight. It was hoped the question would cause the legislators to take a second look and decide whether the fox [the executive branch] is in fact loose in the hen house.

Rather than trying to summarize the legislator's answers and then give a few examples, for this question each legislator's name will be listed with his or her answer immediately following.

Senator Corliss Mushik: "Just about the minute after I leave. As soon as we've left the premises, it's almost as if they [executive personnel] give this enormous sigh of relief, go about their business and you [legislators] really don't have any idea what is happening."²⁸

Senator John Olson: "I have never felt that way."²⁹

Representative Diane Ness: "I don't know that I would go that far. I just know that it is awfully hard for legislators to keep track of everything that is going on when you only meet every other year."³⁰

Representative Jay Graba: "As of right now, I think the oversight is there. I really do. I don't think that we lack it."³¹

Senator Jack Ingstad: "The legislature shouldn't be too concerned with overseeing those executive branches. We direct, at the very beginning, the budget and the duties and if they don't fulfill those responsibilities, then the people, every four years, have the responsibility to remove them."³²

Representative Roy Hausauer: "It is hard to say. After we do leave the session, I do find things change. We are not there 24-hours a day anymore and things do change after you leave, absolutely."³³

Senator Art Todd: "You find, I think, that the agencies are watching their 'Ps' and 'Qs' very carefully when the legislature is in session. They perhaps slacken a little bit as time goes on once the legislature leaves town. However, I don't think I've seen any blatant abuses. So, I don't see any real foxes running rampant through the hen house."³⁴

Senator Dan Wogsland: "I think a lot more can be done to oversee the executive. Certainly the legislature has given up a lot of power to the executive. We have delegated too much."³⁵

Representative Dan Gerhardt: "You have to count on the bureaucrat to implement and run the programs. You have to have that faith in them. But you should also be able, every off-year, to come in and check on the implementation of the programs."³⁶

Senator Wayne Stenehjem: "Sometimes you work and say, 'I hope what we just got done passing is what they [the executive branch] will do.' But as I have said many times during the legislature, 'we will always be back.' I think that the people in the executive branch remember that. We will be back."³⁷

Representative Judy DeMers: "I don't. I guess I basically trust the executive unless they do otherwise and then you follow up on it."³⁸

Representative Bill Skjerven: "I don't have that feeling."³⁹

Representative Charles Mertens: "It could be. I have never gotten that feeling. I know a lot of legislators have complained about that. My personal opinion, after twenty years of service in the legislature, is that the executive branch has just not abused their power that much."⁴⁰

Representative Janet Wentz: "I've never felt that way. I have always had a lot of faith and confidence in our public employees. I think we have to operate that way. Until that confidence is proven to be misplaced, then I'll be satisfied that we have done our job and they can be relied upon to do theirs."⁴¹

It seems the feeling of these fourteen legislators is one of a little bit of worry, once in a while, about leaving the executive by itself with money and programs, but not a lot of great concern. Except for Senator Mushik, who definitely sees the fox running loose and Senator Wogsland who fears too much delegation of power, the others seem comfortable with a system which has worked so far and been almost abuse free.

Annual Sessions

As stated earlier, a question about annual sessions was not asked as part of the survey. However, annual sessions as an oversight tool was mentioned by nine of the fourteen legislators during the course of the interviews. All of those who mentioned annual sessions cited the need for closer oversight of the executive budget as the primary reason. The following consists of four examples:

Senator Corliss Mushik: "I believe we should have annual sessions. I think the fact that we have to project appropriations budgeting two and sometimes three years in advance in today's world is ridiculous."⁴²

Senator John Olson: "I've advocated in the last couple of years that we go to annual sessions. Many of these budgets, like human services, are very complex and difficult to understand. So taking a look at it every two years just doesn't make this thing work very well anymore."⁴³

Senator Dan Wogsland: "We try to do too much with too little. You are not going to run a billion dollar business meeting four months every two years. Government isn't a business, but we [legislators] are the board of directors, we are the managers of the State, and you can't properly manage in that way. I think North Dakota's got to quickly come to the day when we go to the annual sessions and expand our role."⁴⁴

Representative Dan Gerhardt: "We need a nineteen-day session in the off-years to check what's going on. We need to check and see what legislation has been implemented, how it's been implemented, and what can be done to correct it. It's kind of like being a Monday morning quarterback."⁴⁵

A change to annual sessions does not need a constitutional amendment unless the eighty-day limit is to be changed. A change would not need a vote of the people. The legislature can divide up the session any way it sees fit, as long as the total of legislative days does not exceed eighty in a biennium.

CHAPTER THREE
END NOTES

THE LEGISLATIVE COUNCIL AND STAFF

¹North Dakota Century Code, vol. 10B (Charlottesville, Virginia: The Michie Company, 1989), pp. 263-264.

²Ibid., pp. 264-265.

³Ibid., pp. 263-264.

⁴John D. Olsrud, interview by author, Tape recording, Grand Forks, North Dakota, 12 March 1990.

⁵Ibid., 12 March 1990.

⁶Ibid., 12 March 1990.

⁷Ibid., 12 March 1990.

⁸Ibid., 12 March 1990.

⁹Ibid., 12 March 1990.

¹⁰Ibid., 12 March 1990.

¹¹Ibid., 12 March 1990.

THE LEGISLATOR'S VIEWPOINT

¹Jayson "Jay" L. Graba, interview by author, Tape recording, Grand Forks, North Dakota, 12 March 1990.

²Arthur R. Todd, interview by author, Tape recording, Grand Forks, North Dakota, 12 March 1990.

³Wayne Stenehjem, interview by author, Tape recording, Grand Forks, North Dakota, 13 March 1990.

⁴Judy L. DeMers, interview by author, Tape recording, Grand Forks, North Dakota, 13 March 1990.

⁵Ibid., 13 March 1990.

⁶Janet M. Wentz, interview by author, Tape recording, Grand Forks, North Dakota, 13 March 1990.

⁷DeMers interview, 13 March 1990.

- ⁸W. C. "Bill" Skjerven, interview by author, Tape recording, Grand Forks, North Dakota, 13 March 1990.
- ⁹John M. Olson, interview by author, Tape recording, Grand Forks, North Dakota, 12 March 1990.
- ¹⁰Graba interview, 12 March 1990.
- ¹¹Todd interview, 12 March 1990.
- ¹²Daniel K. Wogsland, interview by author, Tape recording, Grand Forks, North Dakota, 13 March 1990.
- ¹³Corliss Mushik, interview by author, Tape recording, Grand Forks, North Dakota, 13 March 1990.
- ¹⁴Diane R. Ness, interview by author, Tape recording, Grand Forks, North Dakota, 12 March 1990.
- ¹⁵Wogsland interview, 13 March 1990.
- ¹⁶Jack W. Ingstad, interview by author, Tape recording, Grand Forks, North Dakota, 12 March 1990.
- ¹⁷Todd, Wentz and Olson interviews, 12 & 13 March 1990.
- ¹⁸Ingstad interview, 12 March 1990.
- ¹⁹Alvin Hausauer, interview by author, Tape recording, Grand Forks, North Dakota, 12 March 1990.
- ²⁰Stenehjem interview, 13 March 1990.
- ²¹Charles Mertens, interview by author, Tape recording, Grand Forks, North Dakota, 13 March 1990.
- ²²Olson interview, 12 March 1990.
- ²³DeMers interview, 13 March 1990.
- ²⁴Mushik interview, 13 March 1990.
- ²⁵Olson interview, 12 March 1990.
- ²⁶Graba interview, 12 March 1990.
- ²⁷Wogsland interview, 13 March 1990.
- ²⁸Mushik interview, 13 March 1990.
- ²⁹Olson interview, 12 March 1990.
- ³⁰Ness interview, 12 March 1990.

- ³¹Graba interview, 12 March 1990.
- ³²Ingstad interview, 12 March 1990.
- ³³Hausauer interview, 12 March 1990.
- ³⁴Todd interview, 12 March 1990.
- ³⁵Wogsland interview, 13 March 1990.
- ³⁶Gerhardt interview, 13 March 1990.
- ³⁷Stenehjem interview, 13 March 1990.
- ³⁸DeMers interview, 13 March 1990.
- ³⁹Skjerven interview, 13 March 1990.
- ⁴⁰Mertens interview, 13 March 1990.
- ⁴¹Wentz interview, 13 March 1990.
- ⁴²Mushik interview, 13 March 1990.
- ⁴³Olson interview, 12 March 1990.
- ⁴⁴Wogsland interview, 13 March 1990.
- ⁴⁵Dan W. Gerhardt, interview by author, Tape recording, Grand Forks, North Dakota, 13 March 1990.

CHAPTER FOUR

CONCLUSION

Oversight, whether it be in Congress or the North Dakota Legislature is tough to measure. This study has shown that both legislative bodies have an abundance of oversight tools. It has also shown, that while members of Congress and the State Legislature are aware of their oversight responsibilities, few choose to use the tools given them on a regular basis or to their fullest extent.

The North Dakota Legislature

Members of the North Dakota Legislature are very aware of the independence of the executive branch in the time between legislative sessions. However, it seems the State's lawmakers are content with occasional questioning of executive agencies or their own faith in the executive's integrity, rather than aggressive oversight, to ensure efficiency and effectiveness in spending and program implementation.

For the most part, members of the North Dakota Legislature cannot be faulted for their lack of aggressive oversight. They are parttime lawmakers. While some are retired farmers,

laborers, or businessmen, the majority hold down full-time jobs in the private sector. It is those jobs and not their legislative salaries that put food on the table.

The work they do for constituents, the time spent attending interim committee meetings and reading pages of information sent out by the legislative council staff, must all be balanced against the time needed to earn their real living.

Only a handful of the State's legislators live in or near the capitol city. For most, any personal oversight meetings with agencies will involve many miles and many hours of driving. There is also the problem of staff. The State legislators do not have personal staff. Therefore, every visit, every letter, and every phone call, must be handled by the individual legislator.

Time is the real enemy of those serving in the North Dakota Legislature. There is not enough time during the interim to balance job and legislative oversight duties. While in session, the eighty day time limit leaves very little time for proper oversight hearings by the committees. Every bill introduced must have at least one hearing and be voted on at least once on the floor of either the House or Senate. In past sessions the bill load has climbed close to fifteen-hundred.

Many feel that annual sessions would help the legislature lighten its load and do a better job of oversight. However, unless the time limit of eighty days is expanded,

those feelings may not be well grounded. The time in each session would be split in some way, but it could not exceed eighty days. There is also no indication that the bill load would lighten.

During the interviews, the legislators did not mention bureaucratic expertise. However, there does not seem to be much doubt, that as State Government in North Dakota becomes more complex, the bureaucracy will become more expert, which could be a negative or positive factor for legislators in oversight of the executive branch. While the legislators could tap into the expertise of the bureaucracy to better educate themselves, they could also find themselves plowed under by jargon and technology and therefore shy away from any effective oversight. For many legislators, as the expertise of the bureaucracy grows, so should their faith in the executive.

While North Dakota's legislators can find aggressive oversight difficult for all the reasons cited above, there is one area of fault that falls on the legislators because of and not in spite of the reasons cited above. In the course of this study it has become clear that legislative oversight is difficult for the parttime legislature. At the same time it has become clear that the legislators have not educated themselves as to the oversight tools available to them and the amount of oversight power they actually possess. It would seem, that with all the difficulties the

legislator has in conducting oversight, education about the tools available would be primary.

The legislators seem hesitant to use the legislative council staff even though they have high praise for the council's work. The legislators seem unaware of the tremendous oversight possibilities of the audit and fiscal review committee, the Budget Section, and the administrative rules committee. They also seem unaware of the oversight possibilities held by the interim committees. The tool box is in place and over time new tools are added. However, if the legislator does not know what the tools can accomplish or how to use them, then the whole tool box is a waste of time.

Legislative oversight is nothing more than holding the executive branch of government accountable. In North Dakota, the top State officials are elected by the people. However, this does not guarantee accountability. Accountability is the duty of the legislature. While time may be the enemy of the North Dakota Legislator, it is no excuse for ignorance of the means available to oversee the executive.

We do have legislative oversight in North Dakota. Of that there is no question. There is a question as to the quality of that oversight. Even under a system which only brings the legislature together once every two years, the methods for excellent oversight are in place. However, the North Dakota Legislature, not unlike its counterpart in

Washington, D.C., has not come close to achieving its legislative oversight potential.

BIBLIOGRAPHY

BOOKS

- Dodd, Lawrence, C., and Richard L. Schott. Congress and the Administrative State. New York: John Wiley and Sons, 1979.
- Fenno, Richard F. The Power of the Purse. Boston: Little Brown and Company, 1966.
- Freeman, J. Leiper. The Political Process: Executive Bureau--Legislative Committee Relations. New York: Random House, 1966.
- Harris, Joseph P. Congressional Control of Administration. Washington, D.C.: The Brookings Institution, 1964.
- Henderson, Thomas A. Congressional Oversight of Executive Agencies: A Study of the House Committee on Government Operations. Gainesville, Florida: University of Florida Press, 1970.
- North Dakota Century Code. Volume 10B. Charlottesville, Virginia: The Michie Company, 1989.
- Ogul, Morris S. Congress Oversees the Bureaucracy: Studies in Legislative Supervision. Pennsylvania: University of Pittsburgh Press, 1976.
- Oleszek, Walter J. Congressional Procedures and the Policy Process, 2nd ed. Washington, D.C.: CQ Press, 1984.
- Report of the North Dakota Legislative Council: Fifty-first Legislative Assembly. Bismarck, North Dakota: State Printer, 1989.
- Rieselbach, Leroy N. In the Congressional System: Notes and Readings. Belmont, California: Wadsworth Publishing Company, Inc., 1970.

- Ripley, Randall B., and Grace A. Franklin. Congress, the Bureaucracy, and Public Policy. 4th ed. Chicago: The Dorsey Press, 1987.
- Rosen, Bernard. Holding Government Bureaucracies Accountable. New York: Praeger Publishers, 1982.
- Zweig, Franklin M., and Keith E. Marvin, eds. Educating Policymakers for Evaluation: Legislation. Vol. 9. Beverly Hills, California: Sage Publications, 1981.

JOURNALS

- Bibby, John F. "Committee Characteristics and Legislative Oversight of Administration," Midwest Journal of Political Science 10 (February 1966): 78-98.
- Brown, Richard, and Ray D. Pethtel. "A Matter of Facts: State Legislative Performance Auditing," Public Administration Review 34 (July/August 1974): 318-326.
- Cotter, Cornelius P., and J. Malcolm Smith. "Administrative Accountability to Congress: The Concurrent Resolution," Western Political Quarterly 9 (December 1956): 955-966.
- _____. "Administrative Responsibility: Congressional Prescription of Interagency Relationships," Western Political Quarterly 10 (December 1957): 765-782.
- Finer, Herman. "Administrative Responsibility in Democratic Government," Public Administration Review 1 (Summer 1941): 335-350.
- Friedrich, Carl J. "Public Policy and the Nature of Administrative Responsibility," Public Policy 1 (1940): 3-24.
- Jahinge, Thomas P. "The Congressional Committee System and the Oversight Process: Congress and NASA," The Western Political Quarterly 21 (June 1968): 227-239.
- Kammerer, Gladys M. "Legislative Oversight of Administration in Kentucky," Public Administration Review 10 (Summer 1950): 169-175.
- Kerr, James R. "Congress and Space: Overview or Oversight," Public Administration Review 25 (September 1965): 185-192.

Marvin, Keith E., and James L. Hendrich. "GAO Helps Congress Evaluate Programs," Public Administration Review 34 (July/August): 327-332.

Newman, Frank C., and Harry J. Keaton. "Congress and the Faithful Execution of Laws--Should Legislators Supervise Administrators," California Law Review 41 (1953-54): 565-595.

Scher, Seymour. "Conditions for Legislative Control," Journal of Politics 25 No. 3 (August 1963): 389.

_____. "Congressional Committee Members as Independent Agency Overseers: A Case Study," American Political Science Review 54 (December 1960): 911-920.

Sharhansky, Ira. "An Appropriations Subcommittee and Its Client Agencies: A Comparative Study of Supervision and Control," American Political Science Review 59 (December 1965): 622-628.

Smith, Malcolm J., and Cornelius P. Cotter. "Administrative Accountability: Reporting to Congress," Western Political Quarterly 10 (June 1957): 405-415

Vinyard, Dale. "Congressional Checking on Executive Agencies," Business and Government Review 11 (September-October 1970): 14-18.

INTERVIEWS

DeMers, Judy L., State Representative. Interview by author, 13 March 1990, Grand Forks, North Dakota. Tape recording.

Gerhardt, Dan W., State Representative. Interview by author, 13 March 1990, Grand Forks, North Dakota. Tape recording.

Graba, Jayson "Jay" L., State Representative. Interview by author, 12 March 1990, Grand Forks, North Dakota. Tape recording.

Hausauer, Roy, State Representative. Interview by author, 12 March 1990, Grand Forks, North Dakota. Tape recording.

Ingstad, Jack W., State Senator. Interview by author, 12 March 1990, Grand Forks, North Dakota. Tape recording.

- Mertens, Charles, State Representative. Interview by author, 13 March 1990, Grand Forks, North Dakota. Tape recording.
- Mushik, Corliss, State Senator. Interview by author, 13 March 1990, Grand Forks, North Dakota. Tape recording.
- Nelson, Chester E., Jr., Legislative Budget Analyst and Auditor. Interview by author, 13 March 1990, Grand Forks, North Dakota. Tape recording.
- Ness, Diane R., State Representative. Interview by author, 12 March 1990, Grand Forks, North Dakota. Tape recording.
- Olson, John M., State Senator. Interview by author, 12 March 1990, Grand Forks, North Dakota. Tape recording.
- Olsrud, John D., Director, North Dakota Legislative Council. Interview by author, 12 March 1990, Grand Forks, North Dakota. Tape recording.
- Skjerven, W. C. "Bill," State Representative. Interview by author, 13 March 1990, Grand Forks, North Dakota. Tape recording.
- Stenehjem, Wayne, State Senator. Interview by author, 13 March 1990, Grand Forks, North Dakota. Tape recording.
- Todd, Arthur R., State Senator. Interview by author, 12 March 1990, Grand Forks, North Dakota. Tape recording.
- Wentz, Janet M., State Representative. Interview by author, 13 March 1990, Grand Forks, North Dakota. Tape recording.
- Wogsland, Daniel K., State Senator. Interview by author, 13 March 1990, Grand Forks, North Dakota. Tape recording.