



1-31-1994

North Dakota Intelligencer: January 31, 1994

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Grand Forks Herald

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Intelligence

An inside report on people, politics & power



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Number 22

Volume 2

January 31, 1994

Like Bill, like Ed

Schafer's speech in some ways echoes Clinton's

Despite the obvious political differences, Gov. **Ed Schafer's** State of the State address of Jan. 27 bore a striking resemblance to President **Clinton's** State of the Union speech two days earlier.

Most of what Schafer said reflected his well-known positions, and he used the event at the Heritage Center to focus public opinion and gain some major PR and news coverage. There's nothing wrong with that, and the political downside is far smaller than the potential benefit. Just as for Clinton.

Indeed, if anything counts as a failure, it was KXJB-TV in Fargo opting against taking the KX Network feed from Bismarck.

(Although evening news undoubtedly did well by the speech. Public radio in Moorhead, Minn., broadcast the address live, however; and with Prairie Public's network, most everyone in the state could have heard it if they wanted to.)

(We write prior to the actual delivery of the speech or the Democratic reaction speech, and so cannot analyze the atmosphere or political reaction. No doubt there were fewer standing ovations in Bismarck.)

The greatest thematic similarity between the president and governor's speeches was the economy. Both Schafer and Clinton took credit for policies that created jobs and produced an economic upswing. If anything, Schafer was more circumspect than Clinton in the amount of credit he attempted to claim.

"The state of the state is looking up," he said. "Since I was sworn in as governor, 14,300 more people are working in North Dakota. Our unemployment rate of 3.5 percent last month is among the lowest in the country, and that is also the lowest December rate in North Dakota since 1978. The Schafer Administration played a key role the past year in creating jobs and promoting a pro-business attitude, but until everyone has a job, our job is incomplete."

Both talked social issues, with Clinton emphasizing welfare reform and Schafer declaring 1994 "The Year of the Family." His policy people promised more substance than just the declaration.

And if Clinton vowed to veto any health-care plan that failed to provide universal coverage, then Schafer intimated he would not buy into a single-payer plan that many on the Health Care Task Force are pushing for.

"Universal coverage does not mean universal change. More than 90 percent of our residents have health insurance, so we should focus our energies on helping the 7 or 8 percent who aren't covered, and focus our efforts on keeping health insurance affordable for those who are covered."

"Rather than throw out a system that generally works, I prefer that the North Dakota Health Task Force adopt a set of proposals targeted at specific problems. For instance, we should outlaw restrictions on pre-existing conditions, and everyone in the

health insurance system should be able to continue their coverage when they move or change jobs."

Those two points, of course, are the Republican rallying cry in Congress.

As we predicted, Schafer also talked tax reform, mentioning his desire to reduce the corporate income tax rate by removing the federal deduction. Rather than get into specifics, he said Budget Director **Rod Backman** would assemble a team of experts to study the income tax codes. Goals are fairness, balance, simplicity and more aggressive promotion of the economy.

Supporters of higher education found little new to please them, although Schafer did praise the system for consolidating courses and cutting duplication.

"Your efforts are not being overlooked nor underestimated in the Governor's Office, and we should listen to Chancellor (**Douglas**) **Treadway** and his suggestion that the university system must put more dollars into salaries rather than brick and mortar." Listening is not acting upon.

And no, Fish 'N Dakota did not come up. Spokesman **Rick Collin** said the speech was policy-oriented, and the company is Schafer's personal business. Editorial page editors had deemed it a subject worth addressing, but Schafer apparently thought the issue would detract from his message. But then, Clinton didn't discuss Whitewater, either.

School ruling: Another ticket for inaction

Superintendent of Public Instruction **Wayne Sanstead** says the monkey is still on the Legislature's back.

Perhaps, but as far as we can see, the North Dakota Supreme Court's failure to overturn the state's system of funding public education leaves lawmakers free to swing through the trees, putting school finance reform off for another day . . . or year . . . or decade.

The same conflicts exist that always thwarted change. Property-poor districts still have different interests than

the wealthy districts; urban schools have different needs than rural ones. Without an ARC-lawsuit type of ruling that compels expensive reforms, continued deadlock remains the future.

Had it stood, District Court Judge **William Hodny's** ruling of Feb. 4, 1993, would have forced reform, because he ordered the state to fix the financing system. But, shortly before 5 p.m. on Jan. 24, the Supreme Court released its

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ruling that overturned him.

Justice **William Neumann** wrote the opinion shared by **Beryl Levine** and **Herbert Meschke** that found the system unconstitutional in its entirety, although no individual statute reached that status on its own.

"The existing school finance system in North Dakota has systematically created, and continues (to create), significantly unequal access and opportunities, stemming from lower per-pupil expenditures due to property wealthy variations," Neumann wrote.

But it takes four of the five justices to overturn an act of the Legislature, which by law is presumed constitutional.

Dale Sandstrom's dissenting opinion warms the heart of strict constructionists. School districts have no standing to sue, he argued, and the court no business telling the Legislature how to finance education. "The majority, citing to no specific legal principle, creates a new substantive right under the North Dakota Constitution: The right of school districts to receive less disparate per pupil funding than they are currently receiving."

Still, Sanstead drew succor from the three, and he was taken by Chief Justice **Gerald VandeWalle's** veiled admonitions. The other justices noted that back in 1973, the 20-mill deduct and 21-mill county levy equalized about two-thirds of the statewide average school levy of 65 mills. In 1991-92, state foundation aid payments were equalized only by the 22-mill deduct, while the statewide average mill levy for education exceeded 186 mills.

VandeWalle cited Neumann in writing that the present system is "fraught with funding inequities," and argued that worsening conditions could lead to unconstitutionality.

"Because the 'deduct' does not approach a pragmatic 'school district equalization factor' as the title of section 15-40.1-06, NDCC suggests, it seems inevitable that the restrictions on the ability of school districts to locally raise necessary funds for education (read for minimum curriculum), when coupled with the failure of the 'deduct' to 'equalize' that inability through greater State revenue for those districts having insufficient local tax resources, will eventually require a conclusion that the scheme is unconstitutional at least as applied to the students in those districts."

Attorney General **Heidi Heitkamp** made reference to the same passage, saying VandeWalle was telling the Legislature to be "very, very careful." All it takes is one more justice.

Gov. **Ed Schafer's** response has been well-publicized and was well predictable: There's still a strong need to act; we ought to start at the beginning and examine everything; it's a matter of equity, not funding levels. Funding comes afterward.

Speaking to reporters at about 6 p.m., Schafer also placed an odd political twist to the affair, somehow turning the ruling into an argument for a GOP majority in the state Senate:

"If the Republicans have control of both houses of the Legislature and are working with the leadership of both houses, we can produce something that will work. We won't get involved in the political fighting about who's going to get credit for it or who's going to come up with the right system."

He sees the interim Education Finance Committee as the best vehicle for review.

The message had changed a bit by his Thursday State of the State address, when Schafer touted consensus, collaboration and cooperation. He said the governor's office, DPI and legislative leaders would "develop a process that addresses the issues surrounding the court decision." The end result should be a common legislative agenda, he argued.

Sanstead signed on, even though he initially said that he might resubmit the plan DPI prepared after Hodny's ruling, moderating it some to make it more palatable. The original \$115 million proposal was either laughed at or ignored.

People are always talking about consensus, but some issues represent conflicts of either fundamental principles or basic self-interest. Years and years at attempting consensus have not produced reform yet.

Here's the real vehicle for change: Another lawsuit, this time by a student or students who blame finances for an inadequate education that left them ill-equipped for the world. That will take about four or five years, then the ruling, then legislative action. Reform date: 2001.

Porter throws race to the wind

State Rep. **Gary Porter's** announcement for Congress offered few surprises, sounding like a Republican campaign address anywhere in the country. The Minot legislator talked jobs and disputed the idea of a health-care crisis, saying the problems could be solved through small business insurance pools and malpractice reforms, not "the massive bureaucracies" that plague welfare, housing and other federal programs. During the question period, he circumlocuted.

Porter's sharpest jab at Rep. **Earl Pomeroy**, D-N.D., came over the NAFTA debate, when he accused the first-term rep of staying on the sidelines. "**Earl Pomeroy** told North Dakotans his vote on NAFTA was not for sale to the White House, while he had

Hall talk

already accepted more than \$110,000 from labor unions who led the opposition on NAFTA. As a local Realtor observed to me recently, 'If that \$110,000 didn't buy Earl Pomeroy's vote, it was one heck of a down payment.'"

The only unusual point came when Porter evoked **Bob Dylan**, a la **Jimmy Carter**, or perhaps he was thinking of the **Peter, Paul and Mary** version. Good Republicans all.

"When I was growing up in the 1960s, there was a popular song called 'Blowin' in the Wind.' The song

said in part, 'The answers, my friends, are blowing in the wind. The answers are blowing in the wind.' The message of the song is that there are answers to our problems and that these answers are there for us to seize if only we have the courage to open our eyes, to reach out our hands and grab them. My friends, I say to you today that my eyes are wide open. I do have the courage and the ability to take the right answers to Congress and do this job well — for you and North Dakota."

The lyric actually runs in the singular, "The answer my friend is blowin' in the wind." And goodness knows that Dylan begs different interpretations, but our recollection is that lefty folk types liked this song because it embraced the ephemeral nature of things. You know, answers are unat-

Hall talk/

tainable because they fly on the wind. You can't seize them.

Not to read too much into a strained quotation, but it's things like this that make it hard for a politician to connect to the public.

Selling the bases

As reported elsewhere, Gov. Ed Schafer's appointees to the statewide base-retention committee — now called the Governor's Council of Military Affairs — emphasized the need to avoid having Grand Forks and Minot shooting at each other. They also spoke of selling the value of the bases, especially the economic value, to the state as a whole. The chairman, retired Adjutant General **Alexander Macdonald**, observed that most people in Bismarck or Fargo really don't care about the bases.

But there was also talk of selling the bases to the congressional delegation, getting them all together in one room to stress how important the bases are to the state.

At one point, Macdonald looked at the list of military-related congressional committees and commented wryly that no North Dakotan served on any of them.

A strange but remarkably comical moment arose when someone asked Grand Forks lawyer **John Marshall** how helpful the delegation had been. The resulting pregnant pause would have needed a Caesarian to get delivered.

Some hemming and hawing followed, but then everybody started getting in line. Marshall eventually described how helpful Sen. **Kent Conrad**, D-N.D., had been. Bank of North Dakota President **John Hoeven** mentioned the practice in Congress — certainly common in North Dakota — of letting one member of a delegation take the lead on an issue.

But **Marijo Shide** of Larimore (a Republican) then commented, "If we're going to save both bases, maybe we need all three to line up first."

Clearly some dissatisfaction exists, but it's too politically touchy for people to get into the details. We suspect that base advocates would like Dorgan to take a higher profile, and Marshall was certainly critical when Pomeroy initially planned to skip

Grand Forks when he brought Rep. **Martin Sabo**, D-Minn., to the state. And somewhere, someone must wonder why the two senators spend so much time on television violence when the bases and North Dakota's economy are at stake.

Remember, too, that Porter has said Pomeroy should have held out his NAFTA vote for assurances on the bases. It's an unfair point, because the base-closure process does not work that way, and a base is far too big to be a bargaining chip. Still, some other people might share the sentiment.

WAITing to communicate

Workers Against Inhumane Treatment are not a sophisticated bunch, but the labor-oriented group of injured workers tries very hard to communicate its grievances with the workers compensation system. More often than not, the group fails.

An example occurred recently late one Friday afternoon, the absolute worst time for a news conference. WAIT's **Jeff Husebye** called reporters down to the Bismarck Labor Temple to blast Executive Director **Diane Alm** of the Workers Compensation Bureau for having paid "hush money" to a departing bureau executive.

He cited a Nov. 5 memo from Alm to Gov. **Ed Schafer** asking him to approve six months of severance pay for **Edison Vizuite**, former director of operations for the bureau. Vizuite eventually got \$11,424, Husebye said, or three months' worth.

But it's not true, as WAIT claims, that the law prohibits severance pay. It simply states that, "No state employee or officer is entitled to severance pay upon termination of employment if the employee or officer quit employment voluntarily or resigned of his or her own accord . . ."

Still, WAIT has a point about Alm's memo, which has gained wide circulation in media and political circles. Given people's personal knowledge of Vizuite, the letter is more damning of its writer than its subject.

She questioned Edison's mental health in relation to his dealings with the governor's office, the bureau and, in particular, with Alm.

She went on to question whether he might cause health and safety problems for "those of us in the bureau who work with him. This, in my mind, is a very serious situation and one

which justifies the severance arrangement."

Alm also warned of "very negative" publicity, and potential federal civil rights problems because Vizuite is a minority. (He's Ecuadoran.)

The letter itself would seem to beg a lawsuit. Yet, despite turmoil in the bureau, Schafer appears to have decided to stick with Alm.

Laboring over labor

Gary Holm of Mandan has resigned his position as treasurer of the state Democratic-NPL because of his intention to run for the labor commissioner. Elsewhere, we've yet to hear too much screaming about Commissioner Craig Hagen's decision to keep the minimum wage at \$4.25 an hour until Congress decides what it's going to do. During his news conference, Hagen must have referred six to eight times to "socializing health care" or a "socialist" system. He said he didn't know if that was the new Republican line, but was just the way he saw Clinton's plan.

Clayburgh's contemplations

Dr. **Ben Clayburgh** (motto: Dr. Ben) said in late December that he would take the month of January off from his orthopedic surgeon practice in Grand Forks to think about whether to run for the U.S. Senate.

In late January, he called reporters and said the answer to the question would be 'yes.'

But it obviously didn't take him very much of the month to reach the expected conclusion: At his press conferences held to make the announcement official, Clayburgh trotted out full-color brochures, pins, folders and other campaign paraphernalia. Such items aren't produced in a day. Or even a couple.

Dorgan's back

Sen. **Byron Dorgan**, after an understandable period of inaction following the unexpected death of his daughter late last year, is obviously back in stride.

Dorgan even admitted in late December that he had been generally out of touch, but by mid-January, the flow of press releases and his characteristic ability to seize on issues — notably his search for North Dakota angles to the national radiation research scandal — had returned to normal.

The Intelligencer

Published by the
Grand Forks Herald

Editor: Mike Jacobs

The Intelligencer (USPS 009525) is published biweekly by the Grand Forks Herald, 120 N. Fourth St., Grand Forks, N.D. 58203. Subscriptions are \$44 a year. Second-class postage paid at the Grand Forks post office. POSTMASTER: Send address changes to The Intelligencer, Box 6008, Grand Forks, N.D. 58206-6008. To subscribe, send payment to Box 6008, Grand Forks, N.D. 58206-6008. For assistance, call: (701) 780-1200. Toll-free: (800) 477-6572. Editorial staff: In Grand Forks, Randy Bradbury (701) 780-1138. Fax: (701) 780-1123. In Bismarck, Carter Wood, Press Room, State Capitol, Bismarck, N.D. 58505. (701) 258-2612. Fax: (701) 258-2612. Contents may not be reproduced without permission. Copyright 1994, Grand Forks Herald.

Banking Commission OKs trust proposal for smaller banks

North Dakota continues to march into the financial future, albeit slowly and with a few missteps along the way.

The North Dakota Banking Commission on Jan. 26 reversed an earlier decision and approved an application by the Bismarck-based Investment Center Group Inc., to charter a new subsidiary, IC Trust Co.

The group, founded in 1983 by **Thomas Gunderson**, runs the highly successful Investment Centers of America Inc. The company provides broker-dealer services, insurance, and investment and tax planning through agreements with local banks. Mostly smaller banks are involved, because they find it too costly to operate the services on their own and worry about losing customers to larger ones that can. Investment Centers boasts 200 offices in 16 states, 29 in North Dakota; it expected to handle \$500 million in investment and securities last year.

IC Trust would perform much the same function, letting smaller banks offer trust services without having to refer clients away to a competitor. The subsidiary might also handle the \$155 million in employee benefits Investment Centers now farms out to other trust companies. (The group just picked up Dakota Growers' employee plan.)

Yet the commission rejected the initial application, because state law requires that a trust charter be approved unanimously. Voting no were Banking Commissioner **Gary Preszler**, who questioned the lack of management skills, and **Steve Halvorson**, president of Heartland Trust in Fargo. Halvorson expressed doubt about the need for additional trust services in the state.

Halvorson recused himself this time, simplifying passage. He said he had undertaken extensive study of the trust industry that involved ex parte communications.

The applicants had petitioned for Halvorson's disqualification, arguing his potential competitive interest led to an appearance of conflict of interest. Gunderson had talked to Halvorson about a business relationship in 1990, and discussed buying Heartland Trust Co. in 1992.

The banking department would have fought the petition as untimely, since it came only after the applicants learned Halvorson voted no. Also,

Business beat

Gunderson said he had no plans to compete in Fargo.

Investment Center Group brought in a UND finance professor, **Denise Markovich**, to make the case that North Dakota needed more trust services. She noted that nationwide 27 percent of banks and trusts offered full trust services, compared with just 13 percent in North Dakota. Between 1989 and 1992, trust assets grew nationwide at 12.3 percent a year, from \$6.7 trillion to \$9.5 trillion. In North Dakota, trust assets rose from \$2.4 billion to \$2.8 billion, a 5.5 percent annual increase.

As a relatively wealthy state with an older than average population, North Dakota has an obvious demand for trust services, she argued. However, the applicants brought forward no individual example to state that need.

Gunderson assured Preszler and the board that the subsidiary would not start operating until a qualified trust officer came on board. Gunderson said he had attempted to recruit several, but it was impossible to hire an officer until a charter was in hand. He also promised training of board members and staff to produce expertise in trusts.

To verify the point, the commission made the charter contingent on the trust officer being approved by the banking department. It also expects a complete policy to prevent exploiting the various financial relationships through "self-dealing."

The company reflects a nationwide trend, described in the latest "Bank Director" magazine Gunderson submitted as an exhibit.

"Yes, even those vested and pin-striped embodiments of safety and soundness are slowly stepping out of the sanctum sanctorum and into the 20th century," author **Randy Welch** wrote.

"With more bank customers becoming increasingly sophisticated about their financial planning and more options than ever for them to invest their money, the race for trust department profits is really heating up."

Annual profits often reach 25 percent, the article stated.

Fortnightly update

North Dakota broadcast pioneer **John Boler** died. He was 85. In Minot in 1953, Boler began KCJB (now KXMC), the state's first television station (KFYR, Bismarck, and WDAY, Fargo, went on the air later that year). Boler also began KXJB in Fargo in 1954. The 'JB' in the call letters are his initials. . . . North Dakota reported its first death from this year's flu strain. . . . The Government Services Agency, after a review, cut \$3.7 million from the proposed new Fargo federal courthouse. The price tag now: \$19 million. . . . **Hillary Clinton** may speak at the National Farmers Union convention, set this spring in Fargo. . . . Only a few North Dakota students are using the newly available open enrollment law to switch schools. . . . **Susan Wefald**, appointed to the Public Service Commission to fill the spot left open when **Dale Sandstrom** was elected to the Supreme Court, will run this fall for the remaining two years of Sandstrom's term. . . . It's official: **Carol Jean Larsen** is the next executive director of the state Democratic-NPL Party. . . . A new North Dakota program that rewards state employees 10 percent of the money saved (up to \$1,000) for money-saving ideas, has attracted many suggestions, some of which are expected to save the state cash. . . . Ash from Minneapolis now is being dumped at the landfill near Sawyer. . . . Gov. **Ed Schafer** resigned from the North Dakota Consensus Council, which drew fire last year when some of its members were accused of lobbying without a license. . . . State Sen. **Meyer Kinnoin**, D-Stanley, will propose a death penalty law. . . . Rep. **Don Shide**, R-Larimore, a legislator for 12 years, won't run again. . . . The first installment of the UND-NDSU basketball rivalry ended in a split. The UND women and NDSU men won. . . . Family and friends of **Dwayne Braaten**, using homemade devices, found the snowmobiler's body under the frozen Red River ice after officials had called off diving and other efforts to find the body. . . . A Minot group proposed live horse racing at the State Fair. . . . **Mae Marie Blackmore**, Grand Forks; **Robert Henry**, Newburg; and **Jeanette Satrom**, Valley City, were nominated as candidates for appointment to the State Board of Higher Education to succeed **Gene Martin**, Grand Forks, whose seven-year term is up this summer. . . . Grafton, using \$100,000 in state economic development funds, has hired a consultant to recommend uses for the unused and underused portions of the state Developmental Center.