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# Transcript for Episode 22: Let the Sun Shine In: Constitutional Open Government & the Public's Right-to-Know

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**[Begin Elevating Education-Con-Con on Equity, Finance, and Governance]**

00:00:00

**[Music]**

00:00:03

**Narrator:** From the beginning of Montana's distinctive yet troubled history, the Treasure State was dominated both economically and politically by powerful outside interests who shipped in capital and bought control of the State.

00:00:14

Historians tell us that as the Anaconda Company and its friends ran Montana, economic and political power flowed out into the hands of distant capitalists and corporations.

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Policy was determined in far off New York City and control of the press was rigid. Anaconda's corporate dominance in Montana's political affairs was unique in American history. For its first 75 years, Montana was a one-company State. But then big winds of change roared across the Treasure State; between 1965 and 1980 Montanans ripped off their copper collar, transforming Montana from a corporate colony into a free modern State.

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The people finally controlled their own destiny. The pitched battle between the people and the established power structure was not easily won but fired In a Crucible of Change a new Montana was born. Join Evan Barrett and real history makers of the time as they shine the light on this remarkable era.

00:01:20

**Evan Barrett:** Welcome back to *In the Crucible of Change*. You know nothing is more important in a society than education. And of course, government plays a critical role in the delivery of education to its people. And so we're going to be dealing with that subject matter today and the kind of changes, important changes that took place in education in the *crucible of change*, particularly those that emerged from the Constitutional Convention and the implementation of those changes in the Constitution.

00:01:53

We have an absolutely extraordinary panel with us today. First is Delores Colburg; Delores known to most of us as Doty; Doty Colburg was the Superintendent of Public Instruction in Montana from 1969 through 1977, eight-year term, two terms that were in the center of the *crucible of change*. And she played an important role in all of this.

00:02:26

In addition, we have Dan Harrington. Dan was a member of the Constitution--a Delegate to the Constitutional Convention. Dan was on the Education and Public Lands Committee at the Constitutional Convention and subsequent to that spent 32 years in the Montana Legislature as both a House member and most of the time as a Senator.

00:02:50

And then we're also joined by Bruce Sievers. Bruce was an intern with Senator Metcalf, but then came to Montana to be part of the Constitutional Convention process, worked with the Constitutional Convention Commission, then the Constitutional Convention itself where he was the staff member that dealt with the Education and Public Lands proposals. Subsequent to that he taught for a while at Montana State University, did the Montana--almost created the Montana Committee for the Humanities and then went to California where he spent 10 years doing similar humanities work in California. Ultimately he spent a lot of time in the foundation world and is now a visiting scholar and lecturer at Stanford University. Have I got all that right?

00:03:41

**Bruce Sievers:** That is right.

00:03:42

**Evan Barrett:** Okay; well this--I mean what a wonderful panel but what's such an important, important subject matter is education. Nothing is more important. And a lot of changes took place with the Constitutional Convention related to the governance, the requirement--the financing, the equity of education, Indian Education for All, and how we financed education as well that have made a big difference in Montana over the years. So let me--I want to start with governance, and I think the most obvious and public governance issue that came up before the

Constitutional Convention was whether the Superintendent of Public Instruction of which you were the incumbent at the time, whether the Superintendent of Public Instruction should be recognized as a constitutional official and secondly, should that person be elected or appointed? And that became a bit of a bone of contention during the Constitutional Convention itself.

00:04:41

Now the resolution turned out to be that--that the position was constitutionally recognized and was recognized as being elected by the--by the Constitution. But tell us a little bit about your reflections on that governance issue when--when you were presenting information to the Constitutional Convention and on your reflections on it as the person who was the practitioner.

00:05:05

**Dolores Colburg:** Certainly; thank you Evan. Well yes; I do remember that it was a significant discussion that went on and I provided quite lengthy testimony on that issue before the Committee on Education as well as the Executive Committee, because of course that was the Committee that would ultimately decide the question about whether elected or appointed.

00:05:25

And I thought--saw it in that way that it started with that issue about talking about whether elected or appointed and then went to the matter of, should it be a constitutionally stated office. The majority of the people on the Education Committee deemed that it should remain elective and my position and my testimony covering both those States with appointed positions as well as those States like Montana with elected that the system had worked well as it was in Montana, an elected official had seemingly served the State of Montana very well during that time, so it seemed no compelling reason to change.

00:06:06

**Evan Barrett:** Uh-hm; now the Education Committee of which Dan was a member, a strong majority of that Committee felt like an elected official was the way to go.

00:06:15

**Dolores Colburg:** Correct; correct.

00:06:16

**Evan Barrett:** However, the jurisdiction over the question at a Committee level was with what was the Executive Committee which dealt with the Executive Branch of which the Superintendent is a part. And that Executive Committee was divided and they produced a majority report as I recall that said that it would be up to the Legislature whether or not it would be elected or appointive and a minority report was created signed by only two members of that Committee that said no; the position should be constitutional and should be elective. And then that became a major discussion on the Floor of the Constitutional Convention didn't it?

00:06:58

**Dolores Colburg:** It did; yes, it did. And well, it prevailed at keeping it a constitutional office--and keep it elected.

00:07:06

**Evan Barrett:** Well you know wisdom prevailed, I think. *[Laughs]* And--and part of that may well have been one--when you're presenting an argument to the people they have to ratify it. It's hard to suggest that you're important enough to ratify this Convention but you're not important enough to elect the top education official.

00:07:25

**Dolores Colburg:** Uh-hm.

00:07:26

**Evan Barrett:** And so now you served eight years?

00:07:30

**Dolores Colburg:** Yes.

00:07:32

**Evan Barrett:** And we all felt like at the time that you could have had another four pretty easily but you just decided to pull the--there were no term limits back then.

00:07:41

**Dolores Colburg:** That's right; that's right.

00:07:44

**Evan Barrett:** But you term limited yourself?

00:07:45

**Dolores Colburg:** That's right. *[Laughs]*

00:07:47

**Evan Barrett:** But you did an awful lot during that period and we'll get back to that which--because a lot of the work you did and had your office do set the stage for key information that drove decision-making on education especially the K through 12 education under this--under this Convention.

00:08:06

Now--

00:08:06

Bruce: Evan if I may just say, in the debate about this issue I think the primary arguments on either side were the primary for making it appointed was the idea this might make it a more coherent process with the Governor having sort of central accountability and power for the--the whole operation. The argument for making it elected was essentially that this is--this is an independent operation where it should be--should be voted on by the people as a separate issue from the Governorship so that--that's how you prevailed.

00:08:41

**Dolores Colburg:** Well and that was a point that I made in my testimony as well that not only is this a direct link to the people, since--since it's an elective office, but this is an independent from the Executive Officer in the form of the Governor and therefore could take stances that might not comport with what the Governor wanted, and indeed, there were some occasions when I was State Superintendent that--that was true. And I hued to the line of what I considered to be the best position overall for education whether or not the Governor agreed.

00:09:13

**Evan Barrett:** Well when--even though the Governor is a strong Governor under the Executive proposal the way it worked and under the Reorganization that occurred where we consolidated the government into 20 departments or less there's still a large number of independently elected officials that serve in the Executive Branch with the Governor. And I think that's part of Montanans' reflection of we want a Governor who has got some strength but we're not electing a dictator. And--and the diverse voices about things such as education policy, those kinds of--that kind of diversity of voice I think strengthens the debate about what should be provided from an educational perspective.

00:09:54

Heaven's knows if you end up with someone with too much power where it can go and in fact that was one of the issues that happened in dealing with the Constitutional Convention related to how do you insulate education particularly at the higher education level from the vagaries of bad politics, political intervention in what should be curriculum or firing some professor because he had an outrageous thought or two or said something? You know that did--that was the prevalent thing in Montana prior to this Constitution. So when we speak about governance, there was a splitting of the K through 12 and higher education function that was previously under a single Board. Now that Board, Bruce in your studies, that Board pretty much spent most of its time on--on Regents' activities and very--not enough on K through 12 did it?

00:11:02

**Bruce Sievers:** It was--that's right; it was--it was essentially a quasi-Board of Regents that didn't spend a lot of time and energy on the K-12. And there was a sense that the K-12 was--you know deserved more and that there were very different kinds of issues that applied to the whole State Public School System versus the University

System. And in terms of looking at other models, one of the things that the staff did in all these areas of the Constitution was to do a research on what other States were doing and we found that there were actually only two or three States that had a--a Board of Regents that was constitutionally established. I mean a lot of States had--most States had separate Boards of Regents from the Public Education. But hardly any of them were in the Constitution and we felt it was really important or the Committee felt and--and you know we backed that up with the staff work that the--that making it--stating it in the Constitution and making it constitutionally established would give the Board of Regents that kind of autonomy and independence that it needed to--to shield it from sort of the vagaries of politics.

00:12:15

**Evan Barrett:** But at the same time, K through 12 needed more attention?

00:12:19

**Bruce Sievers:** Right; so that--so it got its separate Board that could--that could attend to it and since a lot of the K-12 operates locally anyway, it's a very different kind of--of governance and power relationship than--than with the statewide universities.

00:12:41

**Evan Barrett:** I might mention that stacked there in front of you is a rather amazing document that we always keep thinking about how the Constitutional Convention Commission had staff people who did research ahead of time, so that when the Constitutional Convention Delegates came here they weren't just operating out of the blue on something; that they had documentation and background information. There were amazing and thorough studies and that particular is a--is a 250-page--it's virtually a book--

00:13:09

**Bruce Sievers:** I apologize for that.

00:13:10



**Evan Barrett:** --that documents all this information that was very helpful I think to the Committee and you cannot only find it online but you can--you can get it on Amazon now. It's kind of a book you know.

00:13:23

**Bruce Sievers:** It's amazing because it--when it got out this was the final report produced. I'm not sure why it took longer than others, but it--it did make it and didn't--I think by that time we had run out of covers so it went out just sort of Xeroxed but then finally later on it got its cover and it actually is available at Amazon.

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I'll just say about the staff; it was an amazing group of people. We all felt very lucky to be connected at the time and everybody on the staff was in their 20s or early 30s. I was 30; I might have been the oldest staff member at the time. And it was--it was kind of a--a wonderful experience for a year for us all to come together and have the resources to do the research.

00:14:04

**Evan Barrett:** Well you know as much as possible we're asking staff members like yourself to participate with your--your memories of these things as well. And but I think that--that document really helped the Education Committee move forward and but let's continue on the governance issue and at least clarify the net effect of what happened.

00:14:29

We--we did have a--an old Board that was predominantly Regents, university-oriented, was giving kind of a short shrift to K through 12. And so based on all the work of the Committee and your analysis and everything else and testimony; there was a split Board. And Boards were split and the independent Regents--we'll talk more about that independence in a second--and a separate Board of--

00:14:58

**Dolores Colburg:** Public Education.

00:14:59

**Evan Barrett:** --Public Education was created. And that Board was appointed by the Governor but they were to work hand-in-glove with the Superintendent of Public Instruction, elected official in providing for what education ought to be in Montana K through 12 or pre-K through 12 apparently now.

00:15:18

**Dolores Colburg:** Well indeed; yes.

00:15:20

**Evan Barrett:** We're doing a lot of that now, too.

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**Dolores Colburg:** Yes.

00:15:22

**Evan Barrett:** So how did you feel about that breakup and that split?

00:15:26

**Dolores Colburg:** Oh I was--I was a firm advocate of creating two Boards so that there would be the one Board you know that would address you know K-12 and Pre-K and another Board for the Regents, precisely because of what you said Evan. And there was frustration not only on the part of myself and members of my staff to you know keep attention on the issues that we felt important having to do with public schools, accreditation, certification, and all matter curriculum but then some of the members of the Boards as well felt the same way. They felt that you know we were rushing through the agenda for K-12 at that time and then you know let's get onto the important business of the Regents, so--. **[Laughs]** And--and there didn't seem to be a lot of you know not a lot of opponents to that notion. Although ultimately the people thought oh gee; we're going to separate K-12 from the University and so how are we going to have communication and coordination? So let's create this combined Board that we'll now call the State Board of Education in which the Board of Public Education and the Regents would from time to time

meet. And which I felt bad that the press started and maybe some others as well calling the Super-Board when there was really nothing super about it.

00:16:51

**Evan Barrett:** Now and so what came out of this was a third Board, the Regents, the Board of Public Education, and then the State Board of Education which was the combination that occasionally met and though some may have called it a Super-Board it in fact became relatively inconsequential. They'd meet once in a while; they'd say do a few things together but by and large there's--it probably enhances some communication where there's the integration needed to figure out when the children are--young people are transitioning out of high school into the University System; there's some relationship things there that are important, but--but it in fact has become almost an artifice rather than a Super-Board.

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**Dolores Colburg:** I'd say.

00:17:35

**Evan Barrett:** But the two Boards stand pretty strong.

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**Dolores Colburg:** Indeed.

00:17:38

**Evan Barrett:** And particularly the University. Now I want to mention Dan that you've been a practitioner under this for all these years. Not only have you had all these elected official positions but you've been a teacher for--how many years were you teaching?

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**Dan Harrington:** Thirty-seven years.

00:17:51

**Evan Barrett:** Thirty-seven years, and--and do you find that the structure that was created you know ended up working from an educator's perspective?

00:18:03

**Dan Harrington:** Well definitely and I--you know probably one of the most important parts when we got into the--into this discussion was where are we going to put--in other words, who is going to have the power, the Board of Education or the Board of Regents? And they felt that by separating these two groups that they would set their own style and I felt that was so very important because there was some problems that were going on in education across the--you know as far as these two Boards working on this.

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And with--with the Board of Regents the whole setup was so--was so very important because we--we developed from out of that the Commissioner of Higher Education. And--and control flowed much more easily through this and into the K through 12 education and some of the things, the equalization of funding was a big problem that was going to come into the K through 12.

00:19:00

**Evan Barrett:** You know the--and you mentioned the Commissioner of Higher Education. That was another governance issue; that's an appointed position to the Board of Regents and we do have a special program we did separately on the *Crucible of Change* series with Larry Pettit who was the first Commissioner of Higher Education who spoke about the--how they implemented these changes in the University System involving him as first Commissioner. That brings front and center the question of not only separation of the Board of Regents but autonomy. Now we had a history in Montana--remember this is the *crucible of change* and we're talking about shedding the copper collar if you will which dominated Montana government and economics and politics for the first 75 years we were a State. Part of that those challenges involved occasionally college professors might say something outrageous and then find themselves getting fired for it or hey you're teaching the wrong stuff. And the--

so the autonomy and independence of the Board of Regents was another critical issue. Would you kind of speak to that a bit Bruce?

00:20:19

**Bruce Sievers:** Well sure. As I mentioned, you know there was this sense that it was really important to think about that kind of autonomy and ability to have--protect the freedom of the--of the university community. And as we looked around we realized that only two or three other States, one of them being California had constitutionally established autonomy for the--for the Board of Regents and we--and if you look at the history of what's happened in those places it has been a very important defensive mechanism to protect that freedom in the University.

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Of course that leads to battles that go on between the Legislature and the University but we all felt and I think history has validated that--that kind of tension was a good tension between the two. So but by putting it in the Constitution it made--it brings it into the Courts if there is a challenge as opposed to a kind of political fight or a legislative fight about who--who should supervise the University.

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**Evan Barrett:** In fact, the power of the Legislature is the power of the purse.

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**Bruce Sievers:** Right.

00:21:28

**Evan Barrett:** And if it's exercised inappropriately, it can force decisions that maybe aren't what ought to be normally done for the good of the education, the people at whichever level, you know I mean that type of control.

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**Bruce Sievers:** And there's still that possibility. I mean the Legislature still does retain the power of the purse so that's what creates the tension but it's a healthy tension.

00:21:52

**Evan Barrett:** And tension sometimes has been resolved by the Courts. Now it wasn't resolved in the Courts early on when there were constraints sought to be put on you know the control of spending for the University System and the University System sued the Legislature and the Governor to say no, no; we--when you send us this money we have the right to say how it's going to be spent. And in fact, the Montana Supreme Court agreed with the Board of Regents and set--early on set the standard that the power of the purse as exercised by the Legislature when it came to the University System was you appropriate to the University Board of Regents and they spread it out. Okay; now we have--by the way there's always a question. My observation as someone who is involved in the University System now after many years of not teaching is that there's always the question of creeping back into that type of control. And there's--some version of that goes on every Legislature. How do we corner the--the education establishment and control not only the amount of money but what they do with the money? And right now we're seeing a case of that where they have performance-based funding is the latest level--label. The Legislature says well we want to make sure there's a set-aside of a certain amount of money that is going to be based upon performance metrics that we--we kind of like.

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And by the way in this case though the only way that's advanced is the Regents have agreed to a certain percentage as having performance-based funding. So in essence it's still Regent-control.

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**Bruce Sievers:** Sure and it's in negotiation. I mean clearly the--the Legislature--the Governor can always cut the budget as a whole and use that as a threat to the University System even though they can't intervene in individuals but the--indirectly they--they can sort of by threatening the entire budget.

00:24:13

But they can't get to this stage of--for instance what was recently proposed by Governor Walker in Wisconsin of changing the fundamental goals and charter of the University System which can happen in Wisconsin although I think they--they politically beat it back but--but it's--Wisconsin does not have a--a constitutionally-guaranteed independence of University, so they could conceivably do that whereas in Montana they could not.

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**Evan Barrett:** Do you have any idea how many States now have an--constitutionally recognize and independent--?

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**Bruce Sievers:** I still think it's only four or five perhaps. I--it's--really when--when we did this it was considered very unusual and California was kind of the--was the model there but there were two or three other States and I don't think it's expanded beyond that.

00:25:05

**Evan Barrett:** Well remember one of the sub-titles of this series is you know that we've created progressive change in Montana and we have to address the challenge of keeping it that way. and there's always an effort to see a retrenchment, a return to rather than the people's voice being strong, the voice of the powerful, the economically powerful being dominant. And the but the Constitution has become in so many cases a protection from both the powerful to having too much and also the vagaries of the Legislature always saying well we got to save some money. Let's--let's just carve up education. Now that had been the pattern prior but there was a--there was some interesting language that came out in the--in the Constitution about equal opportunity for education and the equalization of funding, being able to properly fund education. Can you--and--and by the way, when they said there should be an equal quality education for all guaranteed, isn't that the language that--that came out in there--?

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**Bruce Sievers:** Equal educational opportunity.

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**Dolores Colburg:** Yes; but not--that does not necessarily mean like equal dollars all across.

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**Evan Barrett:** Right; right but what is an equal education? What is a--what is a basic education? That's a big question because it certainly--you can't write the details into the Constitution. Doty were you ahead of the curve on that a little bit?

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**Dolores Colburg:** Well trying to be yes. *[Laughs]* But what resulted after the Constitution--after the Constitution was adopted is that the Legislature that was supposed to fund equitably a basic quality education in Montana said to the Board of Public Education we need to have a definition of what is a basic quality education. And the Board of Public Education said well Superintendent Colburg *[Laughs]* would you take this on? And I said gladly. And using monies that were available under the wonderful Elementary and Secondary Education Act members of my staff put together a study involving widely--widely publicized and attended meetings across the State with all kinds of people, educators, members of the public, and produced and delivered to the Board of Public Education this interim report.

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**Evan Barrett:** A colorful document.

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**Dolores Colburg:** *[Laughs]* Well--

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**Evan Barrett:** Noticeable.

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**Dolores Colburg:** Right; and as you can see it says an interim report, basic quality education with the Board of Public Education State of Montana. And it is not a simple like you know pat description; actually what basically it ultimately said that you know the--the--it talked about some of the--not--not so much talking about the equitability of funding but you know what the basic quality--basic quality education would be.



00:28:18

**Evan Barrett:** But this guarantee which then is implemented by the Legislature and all the principles that are in here or in one way or another become embedded somewhat into the process--

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**Dolores Colburg:** True.

00:28:33

**Evan Barrett:** --the Courts have become the vehicle for adjudicating whether or not the--the Legislative Branch or--is falling short of meeting the constitutional provision. And in fact, it's the Courts that have held back and--and have repeatedly said stop; you're not doing enough. You're short-circuiting and short-shrift(ing) I guess the--the educational monies. In the Legislature you had to deal with that an awful lot Dan over the years.

00:29:04

**Dan Harrington:** We did and right from the start there was always attempts made to reach this--this level of quality education. However, under the--under the next tax system that was set up in the Constitution, it--it provided more funding but the funding was not being spread equally--across the State into these different districts. And it finally--it came to a head in 1989 when the Courts ordered the fact that the State was not providing a quality education that we were--went into Special Session early in June of--of 1989 and in that period we--we worked all the way--we thought we would be through before the 4<sup>th</sup> of July and we did end up--and Governor Stevenson was--Governor Stevenson was the Governor of the State of Montana at that time and he vetoed what--most of the stuff that had gone on in the first part, so we were back after the 4<sup>th</sup> of July.

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And in that we--we set up the system of the mills that were set up to--across the State of Montana and that money was to be distributed equally into districts that did not have the tax--

00:30:11

**Evan Barrett:** The rich districts--all districts contributed to a pot of money which means the rich districts gave more and the--the ones that weren't rich gave a little less. But it became a pot that was distributed. Now the 95 mills included Welfare and some other things but how much was education as part of that?

00:30:28

**Dan Harrington:** That was part of 60--60 mills.

00:30:31

**Evan Barrett:** Oh okay; now it started out at about 30 didn't it?

00:30:33

**Dan Harrington:** It started out at 30 and--

00:30:36

**Evan Barrett:** Worked its way up?

00:30:38

**Dan Harrington:** --it worked--came back to that point but in that Special Session the--there was a lot of arguing over the different tax entities too in the State of Montana and the Governor at that time decided that he didn't want some of these areas so that we--there was a real shift as far as the tax money was concerned at that time.

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But what we did come out with for the first time, one of the things that had happened at this time is some of the school districts kept their budgets down and the way they kept their budgets down was they--they would turn the--they would give the--each district would--when a teacher reached tenure would--would dismiss that teacher and so they always had younger teachers in the system.

00:31:22

**Evan Barrett:** Keep the payroll down.

00:31:23

**Dan Harrington:** And they kept the payroll down. And one of the things that happened at this time was to try to prevent that from happening. And so we--we did have an equal--

00:31:32

**Evan Barrett:** Prevent it in the sense of if you can be provided adequate resources you don't have to fire good teachers just because they might get tenure. That was sort of the product of providing more money from the State of Montana. There's always the Local tax base.

00:31:47

**Dan Harrington:** Well one of the things that was--that had happened ever since the Old Constitution was--in these counties they always had a problem with funding--with money. That was one of the big reasons why the New Constitution came into existence was the revenue--revenue became a very important part of the State of Montana, the shifting of the revenue from the Local governments from Local counties back to the State of Montana with the Department of Revenue especially property taxes and so on.

00:32:14

And the control was set up at that time through that--through that process. And--and--

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**Evan Barrett:** Now by the way, this continues because I recall back in 2004 when Governor Schweitzer was elected and I became part of his Administration but one of the first things we had to deal with was a Court that had said once again you're falling short. You've got to do better. Go back and figure it out. And then it forced them to figure it out. This guarantee of equality basic education Bruce is that a--a distinctive thing in the Montana constitutional language?

00:32:51

**Bruce Sievers:** Well it--it--again as a constitutional matter essentially so. There was a provision in the New York State Constitution; I think that's the only other one where there is that specific language was used. In fact I was just looking at it. The--the New York 1967 Constitution said equality of educational opportunities shall be guaranteed to all the people of the State. So that was kind of the language that was taken on for the Montana Constitution but it's pretty unique I think. Again, based on what was going on with this famous *Serrano v. Priest* decision in California which set--even though it was just California it set a precedent for talking about educational opportunity, equal educational opportunity as a fundamental right and that because of what was going on, in the change of Montana, the opportunity through Constitution to embed that in the Constitution like it was in New York was seen as a really kind of unique opportunity to make sure that was established as a principle that the State had to live by and that the Courts would interpret accordingly.

00:33:56

**Dolores Colburg:** Indeed. Well and--and the *Serrano v. Priest* case was a real impetus I think in a number of ways, too, to address what was inequitable in Montana School finance and as a matter of fact, my office had conducted a study with the lengthy name, called A Study of Basic Educational Program Funding Methodology in Montana, which was provided to the Constitutional Convention in January of that year. And we could see by--by that extensive study that with school districts at one end of the spectrum and at the other end of the spectrum in terms of their particular you know wealth or--or mills, the disparity could be 10,000 to 1 between districts which is just extraordinary. So *Serrano v. Priest* was certainly an impetus to do that. And then what the Constitution said you know; saying the Legislature shall fund and distribute in an equitable manner to school districts, the State's share of the cost of the basic quality education in elementary and secondary schools.

00:35:04

**Evan Barrett:** There's often a debate about how much is the State share?

00:35:06

**Dolores Colburg:** How much is the State share?

00:35:07

**Evan Barrett:** But nonetheless the Constitution says it's got to be done that way.

00:35:09

**Dolores Colburg:** Got to be done.

00:35:09

Dan: But one of the things that has always been part of the Legislature and is probably occurring right up there right today as they go through the--as they work to come to a conclusion of this Legislature as far as school funding is concerned that everybody that's ever been a Chairman of the Education Committee or of the Appropriations Committee are always looking to find out what is a basic education? In other words, this--and so this argument will go on forever and I know this book has done a great job that Doty had here. This book has done a great job of pointing this out. But for people that don't want that--that extra, they--they think they're going to come up with a better discovery of what a basic quality education is.

00:35:51

**Evan Barrett:** Well I think when you're trying to save money your definition of a-quality education is always to do less.

00:35:58

Dan: That's exactly right.

00:36:00

**Dolores Colburg:** Well that--oh excuse me.

00:36:01

**Evan Barrett:** Oh go ahead.

00:36:00

**Dolores Colburg:** But Dan I don't know what's happened recently because I haven't been paying that much attention but for years we know they've passed all kinds of things through the Legislature and wait until the last to fund education. It's sort of like well how much money do we have left? The--the Foundation Program that was enacted in 1949 set you know the--the State's share of what they would contribute, what would be contributed to the elementary and secondary schools of Montana and in 1949 it was funded 100-percent.

00:36:33

**Evan Barrett:** One hundred-percent.

00:36:33

**Dolores Colburg:** And then it slipped a percentage here and there and there and there and there--

00:36:36

**Evan Barrett:** Starting in '51.

00:36:38

**Dolores Colburg:** Well immediately--immediately after '49. And--

00:36:41

**Evan Barrett:** So you get the erosion of the--of the thing and--

00:36:44

**Dolores Colburg:** Absolutely; and--

00:36:45

**Evan Barrett:** --it's always a challenge. I think by the time the Constitutional Convention met the differential or the early--say the late '60s, the differential was like about a 23-percent--

00:36:56

**Dolores Colburg:** Well and as a matter of fact, when you're mentioning that, the Governor at that time Forrest Anderson, he'd call me up and say well Doty what are you going to need for education this Session? And I said well what's needed and what will result is probably two different things, but Governor if the State were to live up to its promise to fund 100-percent of its share it would take a 23-percent increase. And he said of course that's never going to happen.

00:37:26

**Evan Barrett:** Now that erosion is the constant battle. I will say this that it's just my evaluation of it anyway is that what happened here in terms of both an equal opportunity guarantee and equitable funding references in the Constitution have obviously despite the tension, served Montana well and that's shown in the product of Montana's education. Montana students do well; the whole system seems to be working pretty well that way. But--

00:37:58

Dan: You know I always use this kind of comparison--one of the parts of the Constitution says the people of the State of Montana are entitled to a Clean and Healthful Environment. And then we have a debate what is a clean and healthful environment, and so we go back and forth. But I think the--by having--by setting the precedent so high which we have done I think that's--that has made this one of the finest Constitutions as far as the--this country has enjoyed.

00:38:25

**Dolores Colburg:** Well I think it's always helpful to set a higher bar than a lower bar. *[Laughs]*

00:38:31

**Evan Barrett:** Yeah; and again--

00:38:31

**Dolores Colburg:** We don't want to go to the least common denominator you know.

00:38:35

**Evan Barrett:** You know without the change in the--without a constitutional protection though erosion is so easy and it makes it at least tougher for people to want to balance the budget on the backs of education. And the Courts have been the enforcer of that.

00:38:55

Bruce: Absolutely; there's always a right to have a Constitutional Amendment but that's a lot harder to make happen than just a legislative vote.

00:39:02

**Evan Barrett:** You know a good example of that is that in the 1990--mid-1990s there was an effort to take away some of the authority of the Board of Regents that had been granted in this Constitution. Dan you were a part of the Legislature; that Amendment went through and tell us about it.

00:39:18

Dan: Well it went to the ballot. In other words it was a--you know they went on both sides of the aisles on this. There was people on both sides of the aisle that were--that were wanting--wanted to take away that autonomy to the University System. And but it turned into quite a--you know quite a battle but it ended up that they did get it on the ballot but the people of Montana decided that they--and by a healthy margin--that they wanted to stay with the autonomy to the University System which I thought was great. And I--I don't look for that to happen again any--anytime soon because you know the people kind of got burnt who were pushing this because they thought this was the way to go as far as the University System is concerned.

00:39:59

**Evan Barrett:** My guess is the--the body politic of Montana basically said we trust the constitutional language more than we trust the Legislator elected every two years.



00:40:09

Dan: Exactly right. **[Laughs]**

00:40:12

**Evan Barrett:** You know because you never know what's going to happen in that two-year cycle. And politics is politics. People will cut budgets and do what they can to get elected the next time, so I think the trust--there's a lot of trust in the language that's in this Constitution which is I think one of the strengths of the *crucible of change* period was it happened to be a convergence of a lot of things including this big-time, this Constitution that then embodied so many magnificent changes and protected them by the Constitution--not easy to make those changes.

00:40:50

Dan: I would hate to try and do that in this day and age. I would hate to come back and have to go through this process because it's a--it's a different--I think it would be a different story right now.

00:41:02

**Dolores Colburg:** Uh-hm; I agree, yeah.

00:41:05

**Evan Barrett:** Well you know times change but the Constitution--maybe it's fortuitous that it was written during this particular period but it is held things to Montana--together very well for many, many years. Now one of the things that was in the Constitution and in the Education Article although it didn't come out of the Committee, but it was part of your initial analysis, a very important thing for Montana as a society is the Indian Education for All. Can you speak to that and you addressed it as well so let's talk about that a little bit.

00:41:39

Bruce: Yeah; and again as this period of history, there was a rising awareness of the fact that Indian children especially had--had not been served well by the education system and a real concern that their cultural autonomy

and--and cultural integrity be preserved. And that was just a sort of growing awareness in society. And the--so, it was one of the topics that the Committee decided to take on and we put it in the information in the research materials.

00:42:13

And there were really three different pieces to that; one was the--just the basic educational opportunity, making sure that especially Indian kids who had not had adequate resources and so on for a long period of time were well-served; second that there was a kind of cultural integrity that was able to be maintained, so that--so that there was an awareness and a concern about specific content of education that related to the background of the Indian history and culture; and then actually an interesting third offshoot that wasn't really sort of directly intended by the--at least in the original discussions--was a broader awareness of Indian culture in education by the whole State. And I was interested to hear last year Brian Schweitzer, the former Governor taking this on as a major concern of his that this--this attention to the history of Indians and the history and the culture of the Indian peoples were well-known not only among Indian--the Indian community and Indian kids but this extended to the entire State.

00:43:26

**Evan Barrett:** And in fact, as part of that Administration I would say that one of the great points of pride in that Administration, the Schweitzer Administration was the Indian Education for All and the recognition of that Native Americans are Montana citizens; come right in the front door of the Capitol and be involved in Boards and Commissions and Executive Appointment and everything like that. But to make the point that you know you often had said that the wheels of justice grind slowly but exceedingly fine, you know I mean I think about how long it took to actually take the--the constitutional language of Indian Education for All and it actually didn't get fully implemented until after the 2005 Legislature when Governor Schweitzer was there, notwithstanding the strong support. Now you supported that big-time in the--at the Convention itself didn't you?

00:44:16

**Dolores Colburg:** Well absolutely and as a matter of fact, a member of my staff, Earl Barlow was employed to be in the Indian Education Supervisor in the office to start laying the groundwork for addressing you know the education inequities in the--in terms of our Native Americans. And then I--then another staff member was added. So

we started working even in advance of the Constitution to address the issue of you know the neglect of Indian-- Indian education and to start trying to build some curriculum and materials and all kinds of other things as resources. And I must say that it's a great joy to see Denise Juno, our current Superintendent of Public Instruction an Indian in her own right who has worked so magnificently in extending the Indian--Indian Education for All and in--also in conjunction with her Graduation Matters effort.

00:45:12

**Evan Barrett:** You know she's the only--I don't know if she's the only Native American or just the only female Native American, statewide elected official in America.

00:45:23

**Dolores Colburg:** That's true.

00:45:24

**Evan Barrett:** And it's a distinction Montana holds which it--it recognizes the important role that Native Americans play in our culture and our society.

00:45:32

**Dolores Colburg:** So she has the distinction of being the first you know Native American to be a Chief State School Officer. I had the distinction of being the only woman Chief State School Officer at the time that I was elected, so I would go to meetings with my peers around the United States and they were all men. **[Laughs]**

00:45:51

**Evan Barrett:** Now Dan, one of the big supporters who came before the Constitutional Convention for the--for this was Bill Christiansen who had--who was just then being--who was at that time a Senior Legislator but he was from the Hardin area, so he recognized the need and Bill, a great gentleman was one of the big supporters of pushing this thing wasn't he?

00:46:10

Dan: He was. Bill--Bill did a great deal and--and of course you know it was just the right time and the right type of group as a Convention. It was the right time for something like this to happen. And I think it--it was very hard to try to--to bring out the point that most of these people, you know it was not like a--a lot of people say that you know the--we should run--run the Constitution like the Legislature wrote but we didn't and it--we shouldn't have and it worked out much better for that. But the more of these ideas came out and that was why I feel the Constitution, the 1972 Constitution has--has risen to--I think most in the State of Montana I would say its popularity is very strong.

00:46:59

**Evan Barrett:** Now it was interesting that your study, your analysis addressed this issue pretty thoroughly. Your testimony and your actions of your office addressed it pretty thoroughly and yet it appears that the actual language did not come out of the Education Committee but ended up being added on the Floor.

00:47:22

**Bruce Sievers:** Yeah; I was trying to remember that and unfortunately it's long--so long ago I can't quite remember the sequence, but that is true that I--it was discussed briefly I think in the Committee but then it didn't really become sort of an issue for consideration and inclusion until after it got on the Floor. And I will say Earl Barlow's testimony was very influential.

00:47:45

**Dolores Colburg:** It was and it was--he testified before the Education Committee and--and then Bill Christiansen would frequently come to the office and sit down with Earl and with me to talk about language to put into the Constitution but you're right. I mean Bill was an absolute prime and significant mover in getting that into the Constitution.

00:48:06

**Evan Barrett:** Later Lieutenant Governor for--for a term.

00:48:07

**Dolores Colburg:** Right; yes.

00:48:08

**Evan Barrett:** He was the last independently elected Lieutenant Governor in Montana history and then after that the Executive Branch provision that called for the Governor and Lieutenant Governor to run together applied. But this is a critical thing and we talk about how critical Indian--or education is for everybody and of course obviously it was critical for Native Americans but it was a cultural issue of great importance for Montana as well.

00:48:34

An important issue that came up that is extremely relevant even today, perhaps even more so is the--the issue of the financing that the--that State money should not go to support education that is--that is sectarian, that is religious denominations and so on. Why don't we speak generally to that and then we'll go specifically to Section 6 of the Constitution which does specifically address that issue but in a broader sense that was something that clearly was in the forefront of your analysis and your thinking and that went into the constitutional thinking.

00:49:21

**Bruce Sievers:** Right; well it was again one of those issues that was floating around in those days. I mean you were talking about a kind of progressive change period in Montana history and I think that was another one that was being considered as this relationship between a broadly public education system, purely public education system, and more segregated in terms of ideology or background education that was--would be--would come out of primarily out of religious communities because schools that were private schools tended in Montana at least to be religiously connected.

00:50:00

So there was concern that there should be this--this principle of a broad public education that citizens of the State should be exposed to and have the opportunity to have a broad public education--was fundamentally the--the--the primary principle to be pursued and the public money should be exclusively oriented toward that purpose even though recognizing certainly there's a right to have independent religious education if you choose so. But the--the concept was this should not be a public priority.

00:50:34

**Evan Barrett:** There was a lot of pressure at the time in the Constitution--Convention because the Catholic School System at that time was under financial assault. There were a substantial number of Catholic schools that went under. Today when you look at it the Catholic School System, those that remained have become actually financially very strong. I'm sure they have challenges every day to meet what they need but they're much stronger than they were and there was a very--a period of great losses in the Catholic parochial education system and a lot of the pressure for change occurred then out of that. But unless I'm mistaken, the concept of the public money for--only for the public use was actually in this case a continuation of the language of the 1889 Constitution and was not--

00:51:30

**Bruce Sievers:** That's right; it had already been established. And the question is should that be changed? And so the--the general arguments were around should you open that up or not or what do you--what's the danger in having money then flow in--in one way or another, it could be indirect, could be for textbooks or whatever, and it was also a long-standing discussion about church/state relationships in the US. And this was sort of also happening. There was this dialogue about could--and lots of Court cases; could public money be allocated for sectarian purposes? And the general direction of legal thought and evolution at the time was that there should be a clear separation, a clear kind of wall between church and state even though that--that can get permeated in one way or another, but that--that was being upheld especially in the education arena by having a clear separation of funding.

00:52:32

**Dan Harrington:** The words of the '89 Constitution were--were clarified and put into the New Constitution and it was--the feeling of the Committee and it was a very strong feeling; there was one difference that was put in there. There was a proposal that I did put in that I was asked to put in because it was rather important for certain reasons that universities under Federal monies, the Federal monies could be distributed to private universities in the State of Montana and that was accepted in the Constitution. But that was very limited, very--very limited.

00:53:08

**Bruce Sievers:** And that was Federal money that channeled through the State. That's why the State--

00:53:12

**Dan Harrington:** Channeled yeah.

00:53:13

**Evan Barrett:** Yeah; that's Sub-Section 2 of Section 6. And but a very important aspect and it relates to things today in the language that was adopted by the Constitution when it said aid prohibited to sectarian schools and it says Legislature and da-da-da--shall not make any direct or indirect appropriation or payment from any public funder monies or any other da-da-da--for any--for any sectarian purpose or to aid any church and so on and so forth. So the direct/indirect thing comes into play with efforts at tuition tax credits and things like that because--

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**Bruce Sievers:** Vouchers.

00:53:55

**Evan Barrett:** --yeah vouchers, tuition tax credits become vehicles where you--the money it's kind of a backdoor approach. Well we're not asking for a direct appropriation but just give us a tax credit which is giving up State money. So the Courts have been pretty strong on that thing but that is a continuing ongoing battle and in fact that's a big battle right now in this current Legislature is why don't we give tax credits so that we can--to people who are willing to donate money to a fund that can be given to give scholarships to kids to go to private schools, public, or religious? And that's become a bone of contention but there's some pretty--there's pretty strong language in there that even if enacted there's a pretty good chance something like that would be probably thrown out by the Courts. But none of them have ever gotten by the signature of a Governor.

00:54:55

**Bruce Sievers:** Right and the other thing is that what wasn't really anticipated or very much at the time or embraced at least in this language, this was almost entirely focused on religious private education. But today more and more of

this--of these questions arise around just a private education in general that is not necessarily sectarian. And I think those are the issues that are going to get addressed over time and that it is a little bit unclear because we weren't--we weren't focused on that, although there--in one point in the report--

00:55:27

**Evan Barrett:** There's another Section--

00:55:28

**Bruce Sievers:** Right.

00:55:29

**Evan Barrett:** Of the Constitution that speaks to public monies for public uses, which is outside the Education Section.

00:55:35

**Bruce Sievers:** And even education, in the report it says--there's one reference to non-public education and it doesn't say religious or sectarian. It says non-public; that would be covered in--in the--at that broader interpretation.

00:55:49

**Evan Barrett:** Well if any of those ever get by a Legislature and then get by the Governor's signature the likelihood is the Court should be adjudicating based upon this language.

00:56:01

**Dan Harrington:** I think one of the things that you're noticing is that these--the privatized education to charter schools--this is becoming one of the things that you notice.

00:56:12

**Evan Barrett:** Private as opposed to sectarian?



00:56:13

**Dan Harrington:** Yeah; that's right.

00:56:15

**Dolores Colburg:** Right.

00:56:15

**Evan Barrett:** Although charter schools, you know are a different vehicle. There is a--this commitment to public education, adequate public education is such a--a critical element of the Constitution and it is--and again the experiment in Montana if you will has been very successful.

00:56:36

**Dolores Colburg:** Well and it's--it's been absolutely clear that it is a compelling State interest to support education.

00:56:42

**Evan Barrett:** And you know we always want to do better. But when you measure up Montana's education system against other States and when you look at the product of Montana's education system, against the product of other States, we fair very well, very well and we can always do better but for those--

00:57:02

**Dolores Colburg:** We're usually among the top four or five ranked States in the nation.

00:57:06

**Evan Barrett:** But for those who beat the drums and say yeah we have a terrible education system. We got to all go off and do this private stuff and do this religious stuff and everything else, the truth of the matter is that's not the case. You know the proof is in the pudding.

00:57:19

Now we're--we're quickly wrapping up but to kind of summarize where we are and thank you; you've been a wonderful, wonderful panel. You have so much knowledge and information and experience. It helps to reveal the importance of this thing constitutionally and in real practice in the State of Montana, through the Constitution and its implementation we've been able to have a strong governance set up that involves an elected Superintendent, a separation of the Regents and Higher Education from K through 12 in terms of policy, an autonomy of the Board of Regents because of what that means, the ability to have you know recognition of the cultural and educational importance of Indian Education for All, the guarantee of equal opportunity for education, for everyone within the State of Montana, constitutionally guaranteed, a--a reference to equalization of funding to provide equal education through money as well, and the separation of sectarian education from--from public education. These are the things that have stood the test of time for Montana and so to each of you, Bruce Sievers, Dan Harrington, Dolores Colburg--Doty Colburg, thank you for being part of this wonderful story *In the Crucible of Change*.

00:58:45

**Dolores Colburg:** Thank you.

00:58:46

**Evan Barrett:** I will look forward to seeing you on the next program.

00:58:49

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