Claire Rhein: This is Tuesday, May 2, 1979. An interview with Daniel Kemmis, looking at the 1979 legislative session. I have some specific questions that I’d really like to know, but I think the first thing, Dan, is what was your impression—not in great detail—of the 1979 Legislature and how pleased and/or how disappointing for you in the results?

Daniel Kemmis: I guess I always say the same thing, you know, I’m tired of hearing my own self say it, but my basic attitude was that the session ended up being far less disastrous than I was afraid it was going to be in the early weeks. That is really my strongest impression is that, although I think we passed very little progressive legislation, from my point of view we didn’t move forward in very many areas at all. We didn’t move nearly as far backward as I thought we were going to.

CR: I’d like to come back to where you thought we’d move forward with legislation, but first I’d like to find out more about your particular involvement in the legislature—committee work—and the things that you felt were major as far as you personally were concerned.


CR: Water. That’s very interesting because I understand this was, well that water is growing to become one of the major matters for the state to look at for many reasons. I don’t know how you’d...how would you rate that—one, two, three, four—as far as importance as you were concerned?

DK: Well, I guess I would have to put the Judiciary Committee first. I would put the Water Committee next, and then Local Government and Education.

CR: Did you think that you managed any progressive, forward-moving legislation in any of those fields?

DK: In the Judiciary Committee we passed a bill to expand the size of the Supreme Court. The bill wasn’t in perfect form when it passed, and there were some difficulties with it, but I think that that was important. We passed some new legislation on both child abuse and mistreatment and on spouse abuse. There are probably other areas that I’m not thinking about right now. One other area that I think is going to be important is we passed a mandatory auto insurance bill. The Water Committee as you suggested—I think we had a good deal very important legislation there, and I think we did move forward with some of that legislation.
Specifically, we did set up a statewide-system water adjudication that we hope is going to considerably speed up the process of determining water rights in the state. We are far behind in that area. Just drastically behind. The system we set up in ’73 was an advancement, but there was some real serious weaknesses in it and we weren’t going to get the job done for probably a century under that system and I think that we sped it up some now.

CR: You mentioned adjudication. My first thought is irrigation water so obviously you are thinking much broader than that?

DK: Well, but I still think irrigation water is the most important use of water that we are talking about, and there are other uses that are extremely important. Of course domestic issues you cannot do without, and then in-stream uses are the ones I’m next most concerned about. Industrial uses I’m concerned about that they be made available as is required for small industries but never to the extent that large industrial draws hurt either environmental or wildlife values or agricultural values.

CR: What happens in a case—or this court or this adjudication system cover a situation as I understand that we may be getting into in the Bighorn River with Wyoming using Bighorn water for slurry?

DK: One of the other bills that we passed this session was one to clarify our existing law, and to make it very clear that water cannot—Montana water cannot—be used to slurry coal. Now we have a very straightforward statute on that now and just have to wait for it to be tested.

CR: That is in-state water, now when you look at the Bighorn, the Powder, the Tongue, they all head up in Wyoming.

DK: Well, we have the Yellowstone River Compact and supposedly that divides up the tributaries of the Yellowstone and allocates it between Montana and Wyoming, and our position is of course that the Yellowstone Compact covers the Bighorn.

CR: That’s kind of stretching it though, isn’t it?

DK: I don’t think it’s stretching it (laughs)! I guess I have to take that position, but the intent of the Yellowstone Compact is to cover the Yellowstone and its tributaries and the Bighorn is a tributary, and the fact that the Bighorn isn’t specifically named is Wyoming’s case.

CR: What happens thus far as—is Dakota involved in this? Are the Dakotas involved at all?

DK: Well, of course North Dakota is a signatory to the Yellowstone Compact, and they have rights under the compact also. Their rights probably aren’t seriously affected. They wouldn’t have any rights to the Bighorn as the Bighorn. They have a right to a certain amount of water at the—
CR: Yellowstone?

DK: Right.

CR: When was this Yellowstone Compact—do you have a date on that?

DK: It was about 1953.

CR: That early?

DK: Yes, it is about 25 years old.

CR: Would it still apply?

DK: Oh yes. Absolutely. The Yellowstone Compact is one of the most important pieces, and one of our more important statutes.

CR: And still a progressive piece of legislation for that time, do you think?

DK: Yes.

CR: Well, we got Judiciary Committee and Water. Let’s go on and cover very lightly Local Government and Education Committees before we go back and look at a couple of these things in depth.

DK: Well, the Local Government Committee did almost nothing that was important because the Senate Local Government Committee killed all the good local government bills. They are—I think there is—there is definitely a rising tide of sentiment in favor of giving more power to local governments, but so far the Senate has resisted that and because of that we didn’t get anything to work on that amounted to anything. What we did was spend hours and hours and hours legislating on things that the state should have nothing to do with. Legislating on whether or not counties—how much counties should charge for tombstones at veterans’ cemeteries and that sort of thing. That’s the way we waste our time, and until we give local governments the power to handle their own affairs, we will continue to do that on the Local Government Committee.

CR: You feel that local government is pretty much just stifled by state law. As a result did the new constitution not eliminate some of those problems?

DK: Well, it was a step in that direction, and I think that it mandates that we give broad self-governing powers to local governments. I don’t think that we’ve followed that mandate yet.
CR: Local governments. Is that county...?

DK: County and city.

CR: It seems to me that possibly difficult in this state because you have counties like Yellowstone and you have counties like Phillips. Phillips County, I think, being the least populated and are they by law mandated to perform certain services that they physically and fiscally can’t provide?

DK: That difficulty does arise sometimes. Part of the reason there of course is that we also, by state law, restrict counties to only one form of taxation and that’s the property taxes. If we give them more flexibility in the tax structure then they would be able to meet their responsibilities.

CR: That is in taxing that they can implement because the state as I understand did make some drastic changes in their property tax. So Local Government is kind of a bust as far as you are concerned, how about Education?

DK: Well, Education dealt with some very important topics. With special education we made a lot of changes in the budgeting and funding for special education and vocational education and vocational-technical education. We took on again—although we still didn’t confront the issue directly and it’s going to be back again some other time—we also spent a good deal of time struggling with the Indian studies program. Finally the legislature destroyed the Indian studies program, that is the requirement that local school teachers have some training in Indian studies.

CR: That had an impact on the local university system didn’t it?

DK: Well, I think that it could in a sense that there will no longer be the requirement that teachers have that training so there will be less demand for certain services here.

CR: That was the legislature two years ago, wasn’t it?

DK: No, it was before that. I think that actually it was in ’74 that they enacted that. It could have been ’75, but I don’t think so.

CR: Was there any discussion in the legislature on the opposite end of the special ed [special education] scale, that is for children who are superior.

DK: We had a couple of bills, one to just set up mechanism to sort of allow local school districts to offer special or gifted education. That passed, but that’s easy to do because there was no money in it, then the appropriation finally failed. It had a varied history, but finally there was no money appropriated for it.

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CR: So it’s on the book but no money so it can’t be implemented.

DK: Right, that’s about it.

CR: Were you pleased with your committee assignments? How did you feel about it? What would you have chosen? What were some of the alternatives that you would have chosen besides Natural Resources, which I’m sure would have been one?

DK: Well, we had a block scheduling system this time which that meant it narrowed people’s flexibility in terms of the committees that they could serve on. You could only serve on what is called a “class one committee,” which is the major committees that meet once a week. Well I didn’t really have a choice but to serve on Judiciary, and I would have definitely chosen that as I think it is the most interesting committee in the legislature. If I could have served on another class one committee it probably would have chosen Taxation. I had served on that in ’75, and this was a big year for taxes, of course, so it would have been an interesting place to be. For the other committees my choices were...I was just evenly balanced in choosing between Natural Resources and Local Government, and I think that the Natural Resources committee turned out to have more interesting work this time. I think sooner or later the Local Government Committee has got to do some work, but I think I would have preferred to serve on Natural Resources. Education really isn’t my...isn’t one of the areas of greatest concern to me and wouldn’t...I don’t think I would choose to sit on that committee again.

CR: Does the University system come under the Education Committee?

DK: No, it really doesn’t. The only really dealing that the legislature has with the University system is through appropriations and so it is the Appropriations Committee that handles that. Of course I spent an awful lot of time going before the Appropriations Committee.

CR: I understand, Dan, is that what you did was really heroic work for the University of Montana!

DK: (Laughs.) A lot of people did heroic work. I suppose that because I finally made the motions on the floor that I...more of the press than some other people. I think it was a heroic effort all around really. I was very impressed and I think there are lessons to be learned. The entire Missoula delegation was absolutely solid behind the University. I think our administration did very well, and the faculty was much more involved than it’s ever before, particularly through the union. They had people over there all the time. The students were exceptionally effective, I think, in a variety of ways. The alumni, too, being heavily involved.

CR: I understand that some of the alumni...the lobbyists were subjected to some harassment. Can you say anything about that, or were you aware of this?
DK: There was some of the student lobbyists in other committees, I think, got harassed occasionally.

CR: Deservedly?

DK: Oh, it’s part of the process, I guess, is the way that I look at it. It doesn’t disturb me a lot, and they took it fairly well. They appeared, let’s say, on I think it was a lobbyist disclosure bill that they were supporting, and some lobbyists referred to some remarks that some of them had made while he was working on the nuclear initiative or something like that. You expect that kind of thing. No, I don’t think it’s deserved.

CR: It wasn’t deserved or out of the ordinary because a certain amount of that can be expected. The Senate maintained their majority of one and apparently that majority was effective in a sense that it was a Republican Senate.

DK: Well, on issues where Republicans took their caucus position, they controlled the Senate, there is no doubt about that. I was surprised that particularly in the area of criminal justice and some other areas, I thought the House passed what I thought was very bad legislation. Very often the Democrats in the Senate were able to put together a majority in opposition to it. The Senate killed a lot of bad bills so that the...although the Republicans could run the Senate, the Democrats could run it when it was something the Republicans didn’t feel so very strongly about, and the Democrats were effective very often.

CR: I heard the term used Republicrats concerning several House members...Democratic House members, and it passed me by. You want to look at the Republicrats for a minute?

DK: Well there are probably three or four Democrats in the House who I think are really Republicans and they continue to run as Democrats but they almost never...their voting record is basically along the lines of a Republican philosophy. They would very consistently vote the party even on caucus issues and vote with the Republicans. So that our majority in the House, although appearing to be 55-45, was more like 52 to 48 or 51 to 49.

CR: That close. Are these individuals who have been re-elected several times?

DK: They are three, four, five termers. There is one who sort of fits into that category who was a first termer.

CR: Is there something geographic involved here?

DK: No, it tends to be rural constituencies.

CR: Not east, west?
DK: Not exactly. They tend to be east of the divide but not necessarily the eastern congressional districts. The fact is that the Democrats are very, very thinly represented in eastern Montana now, and I think that you could say that even where we do have representation that they tend to be Republicrats.

CR: Was this a conservative session as expected do you think?

DK: Yes.

CR: That’s a leading question I’m not supposed to ask. We had talked about that when I went back over my notes, the prospect of what this legislature might offer, and I think that we decided that it had probably a trend. What has been the reaction since you came back with people who are not lobbyist or did not go to Helena during the session and from whom you did hear and for those that you’ve talked to since you’ve been back? How are people feeling about this legislature?

DK: I think most people that I have anything to do with feel that it was a very dismal session, and I think they tend to feel it was more dismal that I think it was. On the other hand there is just a natural tendency for people to be flabbergasted by things that go on, whereas I don’t feel they are necessarily that astonishing. I think that people have a tendency to say, “Well, how could that possibly have happened?” as if it could it have been prevented.

CR: You really kind of sound upbeat about this.

DK: Well, maybe I just do it as a defense mechanism (laughs). I can get myself down until I absolutely have to.

CR: You expected very little and it turned out to be not as disastrous. Maybe it’s a matter of relativity. What was a major thing for you?

DK: The university budget.

CR: I’m glad to hear that because that certainly is major for a lot of people too. You are generous in giving credit to many others, but you were on the floor and you got to take some of the credit as you would not have had the credit to take personally if it hadn’t come off. So how did it come off? How did you manage it? You, collectively?

DK: All right, first of all by making the university extremely visible and making it just as clear as we could that something was wrong here. The general idea is that people don’t drive over to Helena a couple of times a week unless there is something wrong, and they don’t—alumni don’t—call from eastern Montana unless they feel that there is something wrong.
CR: When you say there is something wrong, you mean that there was something wrong here on the campus or as something wrong in the way this unit was treated by the legislature?

DK: Both, but one causes the other. The way the unit was treated by the legislature last time was just too drastic a response to a real problem, and that the result of it was an extremely moralization of the campus and I think driving the campus very close to the point where it was no longer able to hold together as a university.

[End of Tape 1]
CR: Okay, now we can have another three minutes of tape. I think my question was, what was the most important single thing in the legislature to you?

DK: Well, my greatest involvement was with the university budget. I think that I spent more time and more of my interns’ time certainly on that than anything else.

CR: The university suffered badly in the last term, for possibly many reasons. You suggested that they were the cause of part of their problem.

DK: Well, we’ve had declining enrollment and I think the university in sessions past has been less than open sometimes in dealing with the legislature about facts and figures and so on, (in terms of matters like) projections of enrollment. There was a little bit of a buildup of distrust and so on, but last time the legislature got a hold of the situation with a vengeance, of course. It took care of the problem of declining enrollment and the result on campus, of course, was just a tremendous demoralization. I think a growing feeling that “is this a safe place to build a career?” and that sort of thing, was just extremely detrimental to good education. Our basic thrust in the legislature was to bring that home—what had happened here and to ask for reconsideration of the way that the budget was built and so on.

CR: And in a way based other than on the 19 to 1 [funding allocation], the famous 19-to-1 [student-faculty] ratio?

DK: We’re still operating on that basis, but I think that we’ve called some aspects of it seriously into question. I hope that during the interim we’ll continue to make some progress toward readjusting that.

CR: How can that be done?

DK: I still think that the main thing that needs to be done is to change the way that we weight graduate credit hours.

CR: All right, but how can it be done in the interim?

DK: Either the Interim Finance Committee will take a look at it and make some recommendations, I hope. Or, Ann Mary Dussault introduced a resolution calling for an interim study that would be by an independent group of legislators – independent from the interim
finance committee. In that case, that study would be directed specifically toward university funding.

CR: This faculty?

DK: No, the whole system.

CR: This unit seems to suffer more than any of the others, is there still talk of closing Dillon [Western Montana College in Dillon]?

DK: There is, and I think sooner or later it’s going to happen.

CR: Do you really?

DK: I think it has to, I don’t think it’s a viable unit. I don’t think it’s going to be able, finally, to argue that it is.

CR: How about Northern [Montana College in Havre]?

DK: I think Northern...that we’re much more deeply committed and I don’t see that coming any time soon. Northern maybe should be made a part of the vocational-technical system but until we get that whole system straightened out some way that won’t happen either.

CR: The problem is frequently the legislators from those areas who hold very tightly to the college in their area, or their people. The alternative too is what happens to those, to the physical facilities there? It’s quite an investment.

DK: Right it is. It depends, there are often some groups that would be interested in using the facility. I think there’d be some possibility with Western of finding a group that would be interested in turning it into a private school of some kind, either secondary or perhaps post-secondary.

CR: Okay, let’s get down to the figures and I’ve heard a couple. I didn’t see the newspapers and I didn’t backtrack on this, I’ll have to admit I didn’t do my homework on the specific thing. Except that I found the newspaper accounts very confusing. We were getting clippings sent to us in Texas and I tried to keep up. I decided that if that with the kind of reporting we were getting in the Missoulian, I just couldn’t do it. I would read things and I not understand it and them to Leo and he’d say well, it just doesn’t make sense.

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DK: Right, no you couldn’t keep up. Things changed so quickly that it was just almost impossible to.

CR: This too, because while I was in Billings, which was your last weekend of the session, I read the Billings Gazette and the Great Falls Tribune and nothing seemed to go together there.

DK: Right.

CR: And I came home not knowing what happened, finally with some of the tax matters that I was interested in. So, let’s look at this money that the—people I have talked with give Dan Kemmis credit for getting somehow something like 300,000 dollars?

DK: I can give you some figures.

CR: All right, give me a little background and give me the figures and let’s see how this worked from your point of view.

DK: The appropriations committee, oh, hello, Dale!

Dale Johnson: I brought another person and a message. Clint said he would see you after this class.

CR: Does that have to go on tape? (laughs) Thank you very much. Okay.

DK: The appropriations committee came up with a budget that would’ve meant a loss of probably 10 to 12 faculty at the University of Montana.

CR: In addition to those we’ve already lost?

DK: Right, this would’ve been over the next biennium and that was just by applying the 19-1 student/faculty ratio. There wasn’t any new departure that they were taking. Our enrollment continues to decline and we have in spite of those cuts not brought ourselves all the way down to a 19-1 ratio or all the way out, whichever way you want to look at it.

CR: This was the beginning of dealing with...?
DK: Right, that where it stood when it came out of the Appropriations Committee. We made a very strong effort in the Appropriations Committee to get money added for all the units of the system. We fell one vote short in the Appropriations Committee. So then we took that motion, that same motion, to the floor. That would’ve added 1.2 million dollars to the overall University system budget.

CR: Which is what?

DK: The overall budget is probably in the neighborhood of 170 million dollars or something like that?

CR: That’s not quite keeping up with the seven percent inflation rate then?

DK: Well, but I’m saying this would’ve—already, what the Appropriations Committee had recommended was a considerable percentage increase over the previous biennium. We were just adding money to what they had recommended, but we were still adding less than one percent to their recommendation. We won that on the floor of the House, narrowly, and then two days later there was a motion to reconsider and that was deleted. Immediately after that motion to reconsider passed, I introduced a motion that would’ve added the University of Montana portion of that increase back into the budget. That was 394,000 dollars extra for the University of Montana. That motion carried, so it left the floor in that form. Now, it then went to the Senate Finance and Claims Committee, but from there it was sent back to — you see you have to realize how this Appropriations Committee works. The appropriations of course are all introduced in the House, a constitutional requirement. So all appropriations bills are House bills, but they are referred to the join subcommittee in each area. So it’s the Joint Education Subcommittee that works over the university budget throughout the first part of the session. Members of both the House Appropriations Committee and the Senate Finance and Claims Committee work on it. Once it leaves the House, my feeling is that House Appropriations Committee members should no longer have anything to say about it. If they do, it should be simply to uphold what the House has done. What happened here is that it was put back into the joint subcommittee and the House committee members went along with an effort to strip out half of what we had added in the House. I felt betrayed by that frankly. That was then reported to the Senate Finance and Claims Committee, that is 190,000 dollars approximately would be added to the university budget, but not 394,000 dollars. What happened then though, is that we began to put—and that was particularly our senators that came in to play, but all of the entire lobby was at work. We convinced the subcommittee to recommend an addition of 150,000 dollars to the university budget for organized research, would not be used for instructional faculty salaries. It could be used to save faculty positions, because you could
ship them out of instruction into research. That was finally added in, so that what we ended up with then was about 350,000-344,000, as opposed to 394,000. So they’re finally coming out of the Senate Finance and Claims Committee we were 50,000 short of where we had been coming out of the House. We finally decided that we would lose more by fighting for that extra 50,000 on the floor of the Senate than we would gain and the entire university delegation, I mean the administration, the faculty, the students, all agreed that we would accept that and go with it.

CR: You had mentioned that the administration worked more closely with you this year in your efforts, and their student lobbyists. President [Richard] Bowers’ reputation is good, I think, with the legislature?

DK: Yes, I think that is was very good and it’s a little bit up in the air now, because [House Representative] Francis Bardanouve tended to blame all of us, including President Bowers, for the effort to change his budget on the floor of the House. He was angry with all of us for that, including the president. Then the President also became very critical of the legislative fiscal analyst and that upset the chairman a little bit.

CR: Everybody has a swipe at the legislative fiscal analyst right?

DK: Right, but Bowers had held his tongue until that point. I think in the end what really matters is that they still trust Bowers’ integrity and so on. I think he’s still in good shape. The thing is the best way to be in good shape with the Appropriations Committee is to go along with what they want and we could not afford to do that, the president didn’t do it.

CR: Did the other units, were they able to raise their funding?

DK: They did, Eastern [Montana College] particularly was –

CR: To the same degree?

DK: No I don’t think to the same degree. Eastern raised its fairly significantly.

CR: Were you able to make any inroads as far as the graduate student weighting?

DK: No, only by implication, what we were really arguing all along was you can’t ask us to cut out these 10 to 12 lines and bring us down to the 19 to 1 ratio as you now calculate it if at the same time you’re going to be looking at that ratio to see whether you calculated it right. You might come back next time and say, well we made a mistake, you should’ve been calculating it

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differently and go ahead and hire those people back. What we were saying is it doesn’t work that way, so you’ve got to give us the flexibility to keep them on until we determine whether the ratio is right or not. So we didn’t change the funding formula, but we built some flexibility into it, so that we can survive at least while we look at it.

CR: Using these research funds too?

DK: Research plus the extra 190,000, which can be used directly to save faculty positions.

CR: That seems to be a major point because you can’t get these people back once they’re gone.

DK: Right, no I don’t think you can.

CR: It creates a poor opinion when you’re trying to hire.

DK: Well, and you’re going to lose more students too in some cases if you weaken programs too much, you’ll lose students and the spiral just continues.

CR: Then it goes down.

DK: Right.

CR: You have another appointment you need to get to?

DK: No, I don’t.

CR: This was not a legislature that did much for natural resources, I’m told?

DK: No, very little.

CR: The last one was quite progressive?

DK: Well, ’73, ’74, ’75 were progressive. Last time they basically held the line and this time we slipped a little.

CR: You slipped a little?
DK: Yes, we allowed introduced species to be used for revegetation in reclaimed lands, we weakened somewhat in-stream reservations, and we weakened the siting act somewhat. I think there was one other fairly major area. But we didn’t weaken air pollution laws, although there was a major effort to do that. There was an effort to weaken the Hard Rock Mining Act and that was finally turned aside by gubernatorial veto, several of these things it was gubernatorial veto that saved us.

CR: Let’s go back to the Judiciary Committee for a moment. The matter of increasing the size of the court passed and we will now have seven justices. They will be elected in 1980.

DK: Right, the two new ones.

CR: What about the bar admission [to the practice of law]? [Montana had a tradition of admitting to the practice of law, without examination, any student who graduated from the University of Montana School of Law. Other applicants had to pass a bar exam.]

DK: That was never brought up.

CR: It wasn’t?

DK: No, there’s nothing the legislature can do about it. The legislature tried last time to get a constitutional amendment passed; the people didn’t pass it. So the legislature has no authority to do anything about it.

CR: So that is an item we scratch, so to say. We had discussed this last fall. Now there was another question of the disqualification of judges on some cases, was it to allow lawyers to ask for the disqualification or to allow them to disqualify themselves?

DK: No, it was to do away with the preemptory disqualifications so that there would not be so much disqualification of judges.

CR: What’s your position on that?

DK: Well I was opposed to it; I don’t think that the system is seriously abused now. I do think that there tend to be biases in judges that everyone knows about, but you can’t necessarily prove and you need some flexibility in the system to respond to those. So I think that it was not a necessary piece of legislation. The Senate passed it, but we killed it in the House Judiciary Committee.
CR: So that’s dead?

DK: Yes, for now.

CR: What about the changes in the criminal code?

DK: Oh there were some very extensive changes. Montana now has a very unique criminal code. Absolutely. For one thing, we’re the only state in the Union that does not now recognize mental disease or defect as a defense to a criminal charge.

CR: The only state?

DK: Yes, after this session. We’re the only state that claims that evidence may not be excluded simply because it was unconstitutionally seized.

CR: Will that change do you think?

DK: Not likely. No.

CR: I really don’t know how to look at that, is that a conservative move? As in, no defense for an insanity?

DK: Yes, I think you can call it a conservative move. I think in both cases that there’s some legitimate concerns that people have. They feel that particularly violent criminals too often are acquitted because a psychiatrist says that they don’t think the same as the rest of us. Those people are always incarcerated, but it’s just that they’re incarcerated at Warm Springs [the state mental hospital] rather than Deer Lodge [the state prison]. There’s just a general feeling that there’s an abuse there, and maybe there is, maybe it does need to be addressed. Perhaps the same with the exclusionary rule, but sometimes you have what amount to minor technical defects in a search or seizure and because of that the evidence is excluded and almost always it’s evidence that without which a conviction can’t be obtained. So it amounts to setting somebody free because of a technical violation and that strikes people as being a bad way to administer criminal justice. As a matter of fact, the United States, I think, is maybe the only major western society that uses something like the exclusionary rule. So I think it’s understandable that people have those frustrations. I think that with both of these bills, although I opposed both of them, first of all I think we can understand were people are coming
from, secondly, I think that the legislature worked hard to make them as good of bills as they can be considering what they are.

CR: Were these bills designed and presented by Meyers?

DK: The insanity defense abolition was. The exclusionary rule abolition was not sponsored by a lawyer, but there were lawyers that were heavily involved in it throughout on both sides; both opposed and favoring the bill.

CR: That one seems to me to be the one that may have a constitutional problem.

DK: Oh it absolutely will. We’ll see, it’s gonna get decided either by being thrown out by the Montana Supreme Court or finally by the United States Supreme Court. Its chances of success, I think, are maybe one in 10.

CR: What about the insanity defense?

DK: It’s not as clear that there are constitutional questions that are raised by it. The exclusionary rule, it’s utterly clear that there are.

CR: Would that fit in, in consideration of the fourth amendment?

DK: Yes. The reason for the exclusionary rule is to enforce the fourth amendment, to give it substance.

CR: The question of maverick Democrats in the house: you said there are four, perhaps five who are more truly Republicrats than Democrats. Was there a problem of leadership?

DK: Well it was a problem for leadership. It was a serious problem for the leadership.

CR: Yes, I can understand that, but was there a problem in the Democratic leadership of the House that allowed perhaps more mavericking than usual?

DK: No, I don’t think so. Other people may disagree with me, but I don’t see how you could have kept those people in line and still in any way acted like a Democratic Party. The only way you could keep them in line was to act like a Republican Party. I hand it to our Democratic leadership that they are Democrats and that they basically ran the party as a Democratic Party. And I have to say this, that in order to not have even more losses – see we couldn’t afford even
one more loss, so that in order not to lose even one more person we had to not take party positions on many things that I think the party should be taking positions on. We had to let all the environmental bills, all the criminal justice bills, all the human rights bills and so on just go their own way without any party position on them just so we could hold together 51 votes.

CR: This legislature had something in the neighborhood of 1,400 bills, as I understand, which seemed like—

[End of Tape 1, Side B]
CR: Okay. The question about this legislature dealing with in the neighborhood of 1,400 bills in 60 days.

DK: Ninety.

CR: Very heavy, Dan. Is this unusual?

DK: Oh, I think the workload was similar to what it generally is. I don’t think it was out of line. It’s too much. Can’t be done right.

CR: We talked about this before—the annual sessions or lengthening of the sessions. Was there any discussion about that?

DK: Oh, we had an annual session’s bill, and it failed again.

CR: It failed again?

DK: Yes. That was no surprise.

CR: How about lengthening the session?

DK: I think it would be much better to go to a session every year that was a little shorter. I don’t like the idea of lengthening the session just now because by the end of 90 days, it’s just a little bit past time when farmers should be home planting. I don’t think it’s fair to ask them to stay. I would rather see two, let’s say, 75-day sessions and then every year they can get home in time.

CR: Interesting. This year, we were in Texas when their legislature convened, and they have a 90-day session every two years, and I was completely flabbergasted that a state the size of Texas with its population and its varieties of problems could handle it.

DK: I don’t think they can.

CR: I didn’t quite find out what they do in the interim, but then that’s not too surprising because I don’t understand what Montana really does in the interim. There are interim committees. However, no more money can be appropriated.

DK: Right.

CR: Does it become a matter of...what? Moving things around in a way that will deal with any situation that arises, given the amount of money that they have?
DK: There’s that. There’s a good deal of that that goes on. The Montana Legislature is more and more active during the interim. We have more and more committees that are doing what we call oversight, that is, watching various state agencies and making sure that they’re administering particular programs in the way that we had intended that they be. Watching for problems and trying to head off problems before they become too serious.

CR: You know, I really want to do this program with you more, as much on a personal basis as covering what the legislature did. So, what are you going to be doing? Are you on any specific interim committees? How much of your time are you going to continue to give to the state that you really aren’t paid for except expenses?

DK: Well, from the point of view of my law office, too much. For sure. My partners would all tell you that, I think. I’m on the Environmental Quality Council, and that will take a certain amount of time. Not a great deal. I think it’ll amount to maybe a couple of days a month. I expect I’ll be on one or another committee having to deal with water, and I don’t know yet exactly what that will be. Depending on which one it is, I may get involved in quite a bit of work there. I’m sure that I’ll continue to be very involved just generally in activities and keeping in touch with various groups around this community and around the state just so that I know what’s going on. I can’t be effective in the legislature unless I maintain those contacts because for me, effectiveness in the legislature means speaking for a large number of people and you can’t do that unless you maintain contact with them.

CR: Is this more about personal sacrifice?

DK: I can’t say that it’s a personal sacrifice. It’s a personal sacrifice in the sense that you have to make a decision that you’re not going to make as much money as you could make otherwise. But there are satisfactions this way that just don’t exist anywhere else for me.

CR: I’m sure you knew about it before you ever ran this fall. Your partners have got to know about it too, and it’s going to be time consuming. You say just one committee could take a couple of days a month, and that’s not always in Missoula.

DK: Right.

CR: And in this state, that presents problems.

DK: Right, it does.

CR: Perhaps we might pick up this business of taxation another time because that’s one of those matters that hits every individual and I’d like to have time to ask you some questions. I’d like to give you the time to explain some of the results of this taxation legislature.

DK: All right, sure.
CR: We can pick another time. Thanks again, Dan.

DK: Sure.

[End of Interview]