

ATTORNEY GENERAL
STATE OF MONTANA

Tim Fox
Attorney General



Department of Justice
215 North Sanders
PO Box 201401
Helena, MT 59620-1401

February 18, 2014

Ms. Vivian Hammill
Chief Legal Counsel
Office of the Commissioner
of Higher Education
2500 Broadway
P.O. Box 203101
Helena, MT 59620-3101

Dear Viv:

This letter will notify you that on February 12, 2014, the Office of the Attorney General was served with a hand-delivered Summons and Petition in the following matter.

JON KRAKAUER, petitioner, v. STATE OF MONTANA, by and through its
COMMISSIONER OF HIGHER EDUCATION, Clayton Christian, respondent. First
Judicial District Court, Lewis and Clark County, Cause No. CDV 2014-117.

Although the Attorney General is responsible for the supervision of all litigation to which the State is a party, this office does not directly handle every case involving the State. Only those agencies entering into a contract with the Agency Legal Services Bureau are directly represented by this office. However, the Attorney General's Office will provide assistance to your agency counsel if requested in connection with litigation.

If the State of Montana, as well as your agency, is named as a party, please be sure that the agency attorney indicates in court documents that he or she also represents the State as a Special Assistant Attorney General.

I would also like to point out that because of the Attorney General's supervisory responsibility with respect to litigation in which the State is a party, this office reserves the right to intervene in such litigation in the event that intervention is appropriate.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Stuart Segrest".

J. STUART SEGREST
Assistant Attorney General

jss/jym

Encs.

c: Commissioner of Higher Education

Peter Michael Meloy
MELOY LAW FIRM
P.O. Box 1241
Helena, MT 59624
(406) 442-8670
mike@meloylawfirm.com
Attorney for Petitioner

RECEIVED
FEB 12 2014
ATTORNEY GENERALS OFFICE
HELENA, MONTANA

**IN THE MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY**

JON KRAKAUER,	)	
Petitioner,	)	
	)	Case No. <u>CDV 2014-117</u>
vs.	)	
	)	SUMMONS
STATE OF MONTANA, by and	)	
through its COMMISSIONER OF	)	KATHY SEELEY
HIGHER EDUCATION, Clayton	)	<i>Presiding Judge</i>
Christian,	)	
Respondent.	)	

**TO: Respondent, STATE OF MONTANA, by and through its
COMMISSIONER OF HIGHER EDUCATION, Clayton Christian:**

YOU ARE HEREBY SUMMONED to answer the Petition in this action which is filed in the office of the clerk of this court, a copy of which is herewith served upon you, and to file your answer and serve a copy thereof upon the Petitioner within 42 days after the service of this summons, exclusive of the day of service. In case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the Complaint.

WITNESS my hand and the seal of said court, this 12 day of February, 2014.

Clerk of District Court

By **C COLBER**
Deputy Clerk



Peter Michael Meloy
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P.O. Box 1241
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(406) 442-8670
mike@meloylawfirm.com

Attorney for Petitioner

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ATTORNEY GENERALS OFFICE
HELENA, MONTANA

CLERK OF DISTRICT COURT

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FILED

BY **C COLBERT**

**IN THE MONTANA FIRST JUDICIAL DISTRICT COURT
LEWIS AND CLARK COUNTY**

JON KRAKAUER,

Petitioner,

vs.

STATE OF MONTANA, by and
through its COMMISSIONER OF
HIGHER EDUCATION, Clayton
Christian,

Respondent.

Cause No. CDV 2014-117

PETITION

KATHY SEELEY
Presiding Judge

COMES NOW the Petitioner, through counsel, and for his petition in the captioned matter, states as follows:

PARTIES AND JURISDICTION

1. Petitioner Jon Krakauer is an award-winning American investigative journalist, now living in Boulder, Colorado whose books and essays are widely read in all fifty states, including Montana. He is working on a new book dealing,

PETITION

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in part, with recent events surrounding the manner in which the University of Montana and the Commissioner of Higher Education resolved a student complaint of sexual assault against another student, well-known starting quarterback for the University of Montana football team, Jordan Johnson.

2. Respondent Commissioner of Higher Education, Clayton Christian, is the director of a State of Montana agency and is an “organization supported in whole or in part by public funds or expending public funds” as defined by 2-3-203(1) MCA and within the meaning of Article II, Section 9 of the Montana Constitution.

3. The Respondent’s actions described below adversely affected Petitioner and prejudiced his right to know, guaranteed by Article II, Section 9 of Montana Constitution.

4. This Court has jurisdiction over this action pursuant to § 2-3-114, MCA, and § 2-3-213, MCA.

COUNT ONE-Constitutional Violation

5. By letter dated January 17th, 2014, the Petitioner requested “the opportunity to inspect or obtain copies of public records that concern the actions of the Office of the Commissioner of Higher Education in July and August 2012 regarding the ruling by the University Court of the University of Montana in which

student Jordan Johnson was found guilty of rape and was ordered expelled from the University.” Respondent Commissioner has refused to permit the requested inspection of such records.

7. Petitioner has a right under Article II, Section 9, of the Constitution of the State of Montana, which states that “no person shall be deprived of the right to examine documents of all public bodies or agencies of state government and its subdivisions except in cases in which the demand of individual privacy clearly exceeds the merits of public disclosure.” Petitioner also asserts his claim, under the Montana Open Records Act (Title 2, Chapter 6, MCA) which provides that citizens are entitled to “inspect all public writings” under § 2-6-102, MCA which includes “public records, kept in this state, of private writings, including electronic mail.” § 2-6-101(3)(d), MCA.

8. Petitioner is presently aware that records related to the decision of the University on the student complaint have been publically disclosed when Judge Dana Christiansen unsealed a federal court file containing the records. Petitioner is also aware that a public criminal trial has been conducted and that all circumstances surrounding the student complaint have been publically disclosed and well publicized in the Missoula area, specifically and across the State of Montana, generally. Moreover, there has been extensive public disclosure of the

manner in which the University of Montana has dealt with complaints against student athletes and the manner in which those complaints have been investigated by local law enforcement authorities. The only records which have not yet been disclosed are those related to the actions of the Respondent Commissioner in reviewing and responding to the decision of the President of the University of Montana and its student discipline committees.

9. By virtue of the public dissemination of information related to the charges of sexual assault and the disclosure of the decisions of the University of Montana in connection with the disciplinary proceedings regarding Jordan Johnson, there is no expectation of privacy with respect to these matters.

9. By its actions describe above, the Respondent Commissioner has violated and deprived Petitioner of his right to examine documents of a public body and agency and continues to violate Petitioner's right to know, guaranteed by Article II, Section 9, Montana Constitution, and § 2-6-102, MCA.

WHEREFORE, Petitioners respectfully ask the Court to grant relief as follows:

1. That the Court issue an order directing Respondent Commissioner of Higher Education to permit Petitioner to inspect and take copies of the following records: all documents related to disciplinary action of Jordan Johnson related to

the Commissioner of Higher Education's review of such action. For the purposes of this request the word "document" includes, but is not limited to all agreements, memoranda, reports, notes, diaries, calendars, telephone bills, internal communications, interoffice communications, e-mails, text messages, facsimiles, telegraphs, letters, books, brochures, manuals, directives, bulletins, worksheets, minutes and summaries of meetings, conversations, or communications of any type, including telephone conversations. "Document" also includes all copies which are not identical to the original. "Document" also includes any police reports related to a sexual assault by Mr. Johnson as well as any documents submitted to the Commissioner by third parties who purport to have an interest in the matter of the proposed disciplinary action against Mr. Johnson. Excluded from this request are medical records, if any, documents subject to the attorney-client privilege if any, names of third party witnesses, if any, social security numbers and/or birth dates and driver's license numbers, if any. In the event the specific document contains a reference to a name of a victim or other third party witness the name may be redacted from the document prior to its disclosure.

2. That the Court order that Petitioner be reimbursed for his costs and attorney fees incurred in bringing this action; and

3. For such other and further relief as this Court may deem just and proper.

DATED this 12th day of February, 2014.

MELOY LAW FIRM
P.O. Box 1241
Helena MT 59624

By 
PETER MICHAEL MELOY