IN THE SUPREME COURT OF THE STATE OF MONTANA
DA 18-0374

JON KRAKAUER

Petitioner and Appellee,

v.

STATE OF MONTANA, by and
Through its COMMISSIONER OF
Higher education, Clayton T. Christian,

Respondent and Appellant.

John Doe,

Intervenor and Appellant.

OPENING BRIEF OF INTERVENOR, JOHN DOE

On Appeal from Montana First Judicial District Court,
Lewis and Clark County, The Honorable Michael Menahan, Presiding

---

[Appearances on following page]

APPEARANCES:

David R. Paoli Paoli Law Firm, P.C. 257 West Front Street, Suite A P.O. Box 8131 Missoula, MT 59802 (406) 542-3330 davidpaoli@paoli-law.com Attorney for Intervenor, John Doe	Vivian V. Hammill Helen C. Thigpen Special Assistant Attorneys General Office of the Commissioner of Higher Education Montana University System 560 North Park Ave. Helena, MT 59620-3201 (406) 449-9130 vhammill@montana.edu hthigpen@montana.edu Attorneys for Respondent and Appellant, 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 and Appellee, Krakauer

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

STATEMENT OF THE ISSUES

1. Did the District Court err in concluding that the specifically named student had no expectation of privacy in his educational records because of the decision in *John Doe v. Univ. of Mont*., No., CV 12-77-M-DLC, 2012 U.S. Dist. LEXIS 88519 (D. Mont. June 26, 2012)?
2. Did the District Court err in ruling that the futility of redaction issue was moot without considering and conclusively ruling on the issue as part of the balancing test?
3. Did the District Court err when it applied the Montana Supreme Court's decision in *Krakauer v. State*, 2016 MT 230, 384 Mont. 527, 381 P.3d 524, by holding that the public's right to know outweighed the enhanced privacy right of the named student?
4. Did the District court err in denying Intervenor's Motion to Compel and Disgorge.
5. Did the District Court err in failing to rule on the Intervenor's Motions:
    a) Intervenor's Motion to Dismiss Petition
    b) Intervenor's Brief in Support to Dismiss Petition-Unclean Hands
    c) Intervenor's Brief in Support of Motion to Dismiss Petition-Futility-FILED UNDER SEAL
    d) Intervenor's Motion to File Under Seal.

STATEMENT OF THE CASE

Intervenor adopts and incorporates by reference Appellant State of Montana's Statement of the Case.

STATEMENT OF THE FACTS

Intervenor adopts and incorporates by reference Appellant State of Montana's Statement of the Facts.

Additionally, on November 17, 2016 John Doe ("Doe or Intervenor") moved to intervene (Dkt. #54). Doe requested the Court's Order on December 21, 2016 to allow him to intervene and requested a Status Conference (Dkt. 57). On February 7, 2017 the District Court granted Intervenor's Motion to Intervene as the issues and rulings affected Intervenor (Dkt. 58). The Judge deferred Intervenor's motion for status conference until the assignment of a new presiding district judge. Thereafter Judge McMahon assumed jurisdiction and was substituted per the motion of Petitioner Krakauer, and Judge Menahan was assigned on April 11, 2017. Thereafter, Intervenor renewed his request for a Status Conference (Dkt. 63) on July 19, 2017. The request was denied on August 3, 2017 (Dkt. 65) because the Judge granted Krakauer's request for the court's *in camera* review prior to holding the status conference.

On October 2, 2017 Intervenor filed his Notice of Videotaped Deposition of Krakauer (Dkt. 74). On October 10, 2017 Krakauer filed his motion to quash the deposition (Dkt. 78). On October 19, 2017 the court issued the ruling at the heart of this appeal.

Intervenor filed the following motions and briefs on September 6, 2018:

1. Intervenor's Motion for Petitioner to Disgorge Information Held Improperly-[Denied by Order dated October 23, 2017]-Dkt. 66;
2. Intervenor's Brief in Support of Motion to Disgorge[Denied]-Dkt. 67;
3. Intervenor's Motion to Dismiss Petition [Never ruled on]-Dkt. 68;
4. Intervenor's Brief in Support to Dismiss Petition-Unclean Hands [Never ruled on]-Dkt. 69;
5. Intervenor's Motion to File Under Seal [Never ruled on]-Dkt. 70;
6. Intervenor's Brief in Support of Motion to Dismiss Petition-(Futility)-FILED UNDER SEAL [Never ruled on]-Never lodged in the District Court docket. See Intervenor's Motion to Supplement Record filed September 13, 2018;

Thereafter, Krakauer filed a consolidated response brief on September 18, 2017 (Dkt. 71). Intervenor then filed a consolidated reply brief in support of his Motion to Dismiss (Futility/Unclean Hands), Disgorge and Seal on October 3, 2017 (Dkt. 76). The District Court issued an order denying Intervenor's Motion to Compel Disgorge on October 23, 2017, which was issued after the Court issued its October 19, 2017 Order releasing records. The District Court never ruled on the two motions to dismiss.

STANDARD OF REVIEW

The Montana Supreme Court reviews *de novo* a district court's conclusions of law regarding a constitutional question and the application of a statute to determine whether the court correctly or incorrectly applied the law in forming any conclusions. *CHS, Inc. v. Mont. Dept. of Rev*., 2013 MT 100, ¶ 16, 369 Mont. 505, 299 P.3d 813; *Steer, Inc., v. Department of Revenue*, 245 Mont. 470, 474-475, 80. P.2d 601, 603 (1990).

Discretionary trial court rulings on motions to dismiss in civil cases are reviewed for an abuse of discretion. *Nystrom v. Melcher*, 262 Mont. 151, 157, 864 P.2d 754, 758 (1993) (citations omitted).

SUMMARY OF THE ARGUMENT

For purposes of the first three issues, Intervenor adopts and incorporates by reference Appellant State of Montana's summary of the argument.

Intervenor filed several motions that the District Court either denied or did not issue a ruling. Those motions, with their briefing status and status of ruling are listed here:

1. Intervenor's Motion for Petitioner to Disgorge Information Held Improperly-[Denied by Order dated October 23, 2017]-Dkt. 66, 67;
2. Intervenor's Motion to Dismiss Petition (Unclean Hands) [Never ruled on]-Dkt. 68, 69;
3. Intervenor's Motion to File Under Seal [Never ruled on]-Dkt. 70;

4. Intervenor's Brief in Support of Motion to Dismiss Petition (Futility) FILED UNDER SEAL [Never ruled on]-Never lodged in the District Court docket.[1]

The District Court's failure to rule on the two motions to dismiss was an abuse of discretion. The motions had substantial merit and should have been considered and ultimately granted.

ARGUMENT

Intervenor adopts and incorporates by reference the arguments of Appellant State of Montana on the first three issues on appeal and provides the following supplemental argument.

I. THE DISTRICT COURT INCORRECTLY APPLIED THE SUPREME COURT'S ENHANCED PRIVACY RIGHT INSTRUCTION.

In addition to the state's arguments, Intervenor adds that Intervenor has taken all available steps to protect and maintain the unique and enhanced privacy interest held by Intervenor. In the Federal Court injunction proceeding (*John Doe v. The University of Montana*, Cause No. CV-12-77-M-DLC (D. Mont. 2012)), Intervenor strove to maintain privacy and confidentiality. He did so not just for himself, but his accuser and others. It was against strong opposition from Intervenor that the Federal court opened the seal and made public, with redactions, the record in that proceeding. Order Dismissing Case and Unsealing Documents,

[1] *See* Intervenor's Motion to Supplement Record filed September 13, 2018.

Doe v. Univ. of Mont. (App. 5). Intervenor has a unique and enhanced privacy interest and it was reversible error for the District Court to conclude Intervenor had no privacy interest.

II. THE DISTRICT COURT INCORRECTLY CONCLUDED THAT THE FUTILITY OF REDACTION ISSUE WAS MOOT.

In *Krakauer* the Montana Supreme Court identified the futility of redacting the student's name when the records request identified the student by name:

> As amicus United States points out, "when an educational institution is asked to disclose education records about a particular person, then no amount of redaction in [the] records themselves will protect the person's identity, because the requestor knows exactly whom the records are about." Obviously, records provided in response to a request naming a particular student will be about that student, whether redacted or not, and thus, there is more of machination than of cooperation in Krakauer's offer, repeated at oral argument, to accept redacted records in response to his request. Consequently, on remand, the District Court must consider whether the futility of redaction affects the privacy analysis and the ultimate determination about what records can be released, if any.

Krakauer v. State, 2016 MT 230, ¶ 38.

Throughout this case, the petitioner has consistently abused Intervenor's confidentiality and privacy rights by naming the individual student by name. In his Petition, Krakauer names the student 6 times. Petition at 2, 3, 4, 5.

At oral arguments before the Montana Supreme Court Petitioner referred to Intervenor by proper name 14 times.

In fact, as recent as Petitioner's last pleading filed in this case, his Response to Request for Status Conference, Krakauer saw fit to once again name the student by his name rather than by the confidential John Doe or Intervenor, despite the admonition from the Supreme Court.

In a diatribe published online after this Court's first decision in this case, Petitioner named Intervenor numerous times. ("Two Years After I Sued to Unseal Records about a University Quarterback Accused of Rape, the Montana Supreme Court just Punted My case back to a Lower Court for Further Review." April 27 2016 Krakauer Blog Post (App. 4). In addition to excoriating the Montana supreme Court: "In a synopsis of this tortuous ruling…," Petitioner not only names Intervenor, but includes several photographs of him. Not surprisingly, Petitioner's rant concludes with a "pitch" to sell his book: "It's available for purchase at Powell's, Amazon or your local independent bookseller."

There is no doubt through Krakauer's own actions he has sought to destroy any kind of privacy or confidentiality with regards to whose records are at issue. Krakauer is not going to respect any redaction once he obtains whatever documents may exist. As this Court said: "….there is more of machination than of cooperation in Krakauer's offer, repeated at oral argument, to accept redacted records in response to his request."

After significant efforts to undermine Intervenor's privacy, Krakauer argues he is entitled to the records because he believes the student's privacy is long gone. In short, Petitioner believes he is entitled to the documents in part because he undermined Intervenor's privacy rights, so there is no longer any privacy to protect. Petitioner's argument is akin to a parent in a dependent neglect case arguing the child need not be protected from trauma because the child has already been irreparably traumatized. Both arguments are equally absurd and offensive.

Petitioner intends to publish these records and identify Intervenor by name each time, maybe with a slight wink and nod, but with impunity, to further publicize his book.

III. THE DISTRICT COURT'S ANALYSIS AND CONCLUSION THAT THE PUBLIC'S RIGHT TO KNOW OUTWEIGHS THE NAMED STUDENT'S ENHANCED PRIVACY RIGHT WAS INCORRECT.

Intervenor adopts and incorporates by reference Appellant State of Montana's arguments regarding this issue.

IV. THE DISTRICT COURT ERED WHEN IT DENIED INTERVENOR'S MOTION TO COMPEL AND DISGORGE.

On October 23, 2017 the District Court denied Intervenor's Motion to Compel and Disgorge. However, the Court had already ruled on the substantive issue in the case when it issued its October 19, 2017 order on Motion for Release of Records. Intervenor's Motion to Compel and Disgorge should have been addressed before the substantive issue in the case was determined. It is

fundamental to a full and fair understanding of the issues and motives of this case to know the illegitimate means by which Krakauer obtained student records. Krakauer has admitted to breaking the law to illegally obtain student records. This alone should disqualify his efforts here.

During his book promotion tour, Krakauer made the following boasts, claims, and admissions of criminality regarding his acquisition and possession of improperly and illegally obtained documents and records:

> I didn't just interview a lot of people I tried to interview the rapist I interviewed victims I interviewed cops off the record I got a lot of records that I wasn't supposed to have. Montana has a very good Press Shield Law so I couldn't do that legally.

(The audio recording of this entire interview was submitted to the District Court along with Intervenor's Brief in Support of Motion to Dismiss-Futility. The above quote is from 11:42-11:56. Copies of the audio recording can be produced again if the record proves inadequate.)

> Instead, he chased written records and audio recordings, and he got them. The information, he said, is a lot more valuable than the mayor and police chief saying, "Trust us, we're on this."
>
> "I got a lot of documents that I'm not supposed to have," Krakauer said.

April 18 2015 Missoulian Article (App. 1) (originally submitted to be filed under seal, never ruled on).

> I, for the most part, did not have cooperation of any law enforcement. I relied on records that I'm not supposed to have. I relied on documents.
>
> But I had thousands and thousands of pages of trial transcripts, hearing transcripts. I had recordings.

April 19 2015 NPR Article (App. 2) (originally submitted to be filed under seal, never ruled on).

> I have all these audio recordings of university investigations and police interviews. I'm not supposed to have this stuff, and I can't say how I got it, and its so much more valuable.

April 22 2015 Salon Article (App. 3) (originally submitted to be filed under seal, never ruled on).

The question naturally arises: how has Krakauer obtained "all these audio recordings of university investigations and police interviews"? Krakauer knows he is violating the law and privacy rules: "I'm not supposed to have this stuff." And, he has already used the improperly obtained student records: "I relied on records I'm not supposed to have."

Intervenor sought an order for Krakauer to disclose all the illegal information he had obtained. Of course, those documents and recordings would have been further evidence of Krakauer's unclean hands, but isn't it sufficient to rely on his admission of illegal activity to refuse his request here?

It is also of concern and necessary to determine the source or sources from which Krakauer obtained these records and documents that he shouldn't possess or

that he violated law by possessing. Pursuant to FERPA, Krakauer is not legally allowed to possess any of the documents he admits "he shouldn't possess."

> Additionally, FERPA authorizes release of personally identifiable information in education records when "such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas…" 20 U.S.C. § 1232g(b)(2)(B); 34 C.F.R. §99.31(a)(9)(i).

Krakauer v. State by & through Christian, 2016 MT 230, ¶ 27, 384 Mont. 527, 381 P.3d 524.

Really, Krakauer isn't asking for the records. He appears to already have them. His efforts appear motivated by a need to obtain student records in one particular case so that he can "backfill" and legitimize the improper and illegal possession of these documents.

Of course, we don't know exactly the documentation he possesses that he shouldn't. Nonetheless, whether it pertains to Intervenor or not, the District Court should have required Krakauer to disgorge all documents he has in his possession. He has no right to possess these documents and has admitted as much. These are protected student records and Krakauer should be required to relinquish them to the Court. It is critical to the students' privacy and their rights to get these records out of Krakauer's unclean hands. Fundamentally, it is also vital to discover who gave these private records to Krakauer; these individuals have violated student rights and privacy, as well.

This Court was very clear what the District Court must analyze:

> Obviously, records provided in response to a request naming a particular student will be about that student, whether redacted or not, and thus, there is more of machination than of cooperation in Krakauer's offer, repeated at oral argument, to accept redacted records in response to his request. Consequently, on remand, the District Court must consider whether the futility of redaction affects the privacy analysis and the ultimate determination about what records can be released, if any.
>
> ….
>
> On remand, the District Court should review the requested documents *in camera*, and in the event it determines to release any document after conducting the balancing test, every precaution should be taken to protect the personal information about other persons contained in the documents.
>
> ….
>
> After giving due consideration to the unique interests at issue in this case, as discussed herein, the District Court will re-conduct the constitutional balancing test and determine what, if any, documents may be released and what redactions may be appropriate.

Krakauer, ¶¶ 38, 39, 42.

Intervenor was not a party to Krakauer or the District Court proceedings which preceded that appeal. These arguments regarding Krakauer's illegal conduct were not a party of that record. Krakauer petitioned the District Court with hands made unclean by improperly obtained students' private records. His law-breaking alone disqualifies him from accessing the front steps of the Courthouse to get these

documents, even though his back-door surreptitious document gathering has been so fruitful.

V. THE DISTRICT COURT ERRED WHEN IT DID NOT RULE ON INTERVENOR'S MOTIONS TO DISMISS PETITION: UNCLEAN HANDS AND FUTILITY.

The District Court did not specifically rule on Intervenor's motions to dismiss based on futility and unclean hands. The District Court did address the futility issue in its May 15, 2018 Order on Motion for Release of Records. That issue has been addressed in the State's opening brief and here. No ruling was ever made with regard to Intervenor's motion to dismiss for unclean hands.

A District Court abuses its discretion by failing to issue a ruling on a material issue raised by a party.

> Thus, while it is true that we generally defer to discretionary decisions of district courts, this rule presupposes that the court did, in fact, exercise its discretion. Indeed, our abuse of discretion standard of review can only be premised on the district court having exercised its discretion; otherwise, there is nothing for us to review. Therefore, we conclude, as have courts from other jurisdictions, that a court's failure to exercise its discretion is, in itself, an abuse of discretion.

State v. Weaver, 276 Mont. 505, 509, 917 P.2d 437, 440 (1996).

Motions to dismiss in civil cases are left to the district court's discretion. *Nystrom*, 262 Mont. at 157, 864 P.2d at 758. In this case, the District Court abused that discretion by failing to rule on Intervenor's motions to dismiss.

"Failure of a district court to exercise discretion is itself an abuse of discretion." *Clark Fork Coal. v. Montana Dep't of Envtl. Quality*, 2008 MT 407, ¶ 43, 347 Mont. 197, 197 P.3d 482 (citing *Weaver*, 276 Mont. at 509).

As argued above, Petitioner already possesses student records that he has obtained improperly or illegally and brags about it in interviews promoting his book. His petition for records uses and abuses Montana's courts to legitimize his improper conduct. Petitioner should not be allowed to perversely profit from our Constitution's enumerated rights.

Krakauer's claims and provocative statements regarding the records he has obtained that he knows should not be in his possession and should never have been provided to him disqualifies his efforts here. "A person may not take advantage of the person's own wrong." §1-3-208, MCA. Krakauer appears to already possess the records and documents he claims to seek through this petition. It is also clear he possesses other students' records he shouldn't have. Because of that, he is merely using the Montana Courts to legitimize his improper and illegal possession of private student records. He is clearly aware of his criminality with regard to receiving and maintaining these records.

The doctrine of unclean hands provides that "[p]arties must not expect relief in equity, unless they come into court with clean hands." See *In re Marriage of Burner*, 246 Mont. 394, 397, 803 P.2d 1099, 1100 (1991) (citations omitted).

Accordingly, this Court will not aid a party whose claim had its inception in the party's wrongdoing, whether the victim of the wrongdoing is the other party or a third party. *See Murphy v. Redland*, 178 Mont. 296, 309, 583 P.2d 1049, 1056 (1978) (citation omitted).

The U.S. Supreme Court has long endorsed the doctrine of unclean hands. Eighty-five years ago, it declared:

> [T]hat whenever a party who, as actor, seeks to set the judicial machinery in motion and obtain some remedy, has violated conscience, or good faith, or other equitable principle, in his prior conduct, then the doors of the court will be shut against him in limine; the court will refuse to interfere on his behalf, to acknowledge his right, or to award him any remedy.

Keystone Driller Co. v. Gen. Excavator Co., 290 U.S. 240, 244-45 (1933).

In a later case, the Supreme Court explained the rationale of unclean hands: "The doctrine is rooted in the historical concept of court of equity as a vehicle for affirmatively enforcing the requirements of conscience and good faith. This presupposes a refusal on its part to be 'the abetter of iniquity."' *Precision Instrument Mfg. Co. v. Auto. Maint. Mach. Co.*, 324 U.S. 806, 814 (1945) (quoting *Bein v. Heath*, 47 U.S. 228 (1848)).

The defense serves two fundamental purposes. It protects judicial integrity and promotes justice. *See Maldonado v. Ford Motor Co.*, 719 N.W.2d 809, 818 (Mich. 2006); *Manown v. Adams*, 598 A.2d 821, 824-25 (Md. Ct. Spec. App.

1991), rev'd on other grounds, 615 A.2d 611, 612 (Md. 1992). The application of unclean hands protects judicial integrity "because allowing a plaintiff with unclean hands to recover creates doubts as to the justice provided by the judicial system." *See Mas v. Coca-Cola*, 163 F.2d 505, 511 (4th Cir. 1947); *Kendall-Jackson Winery Ltd. v. Superior Court*, 90 Cal. Rptr.2d 743, 749 (Cal. Ct. App. 1999). Thus, the court acts to protect itself and not the opposing party. *See Gaudiosi v. Mellon*, 269 F.2d 873, 881 (3d Cir. 1959); *Fibreboard Paper Prods. Corp. v. East Bay Union of Machinists*, 39 Cal. Rptr. 64, 69 (Cal. Ct. App. 1964).

The doctrine promotes justice by preventing "a wrongdoer from enjoying the fruits of his [or her] transgression." *Precision Instrument Mfg. Co. v. Auto. Maintenance Mach. Co.*, 324 U.S. 806, 815 (1945); *Keystone Driller Co. v. Gen. Excavator Co.*, 290 U.S. 240, 245 (1933). Put differently, it makes the wrongdoer litigant "answer for his [or her] own misconduct in the action." *Kendall-Jackson Winery Ltd. v. Superior Court*, 90 Cal.Rptr.2d 743, 749 (Cal. Ct. App. 1999).

As explained by Chafee, the maxim of unclean hands "derives from the unwillingness of a court of equity, as a court of conscience, to lend the aid of its extraordinary powers to a plaintiff who himself is guilty of reprehensible conduct in the controversy and thereby to endorse such behavior." Zechariah Chafee, Jr., *Some Problems of Equity* (1950) (Thomas M. Cooley Lectures Second Series). The party asserting the protection of unclean hands need not show harm from the

misconduct. *See Morton Salt Co. v. G.S. Suppiger Co.*, 314 U.S. 488, 494 (1942) (affirming trial court dismissal of patent infringement complaint for want of equity and explaining that unclean hands applies "regardless of whether the particular defendant has suffered from the misuse of patent").

Here, Krakauer obtained documents by illegitimate—i.e., illegal—means and is trying to use the courts to launder the documents. He is asking the courts to weigh the merits of disclosure against Doe's privacy rights, yet he has already violated Doe's privacy rights as well as other student's privacy rights. Not only did Petitioner improperly obtain students' records, he then provocatively bragged about it in interviews promoting the book he wrote with the assistance of those illegitimately obtained documents. Petitioner shouldn't be allowed to profit from his improper actions with the courts' stamp of approval.

Pursuant to the Family Educational Rights and Privacy Act (FERPA), Krakauer is not legally allowed to possess any of the documents he says he "shouldn't possess":

> Additionally, FERPA authorizes release of personally identifiable information in education records when "such information is furnished in compliance with judicial order, or pursuant to any lawfully issued subpoena, upon condition that parents and the students are notified of all such orders or subpoenas…" 20 U.S.C. § 1232g(b)(2)(B); 34 C.F.R. §99.31(a)(9)(i).

Krakauer, ¶27. Petitioner has never sought any court order, issued any subpoena, nor provided any notice of the same before obtaining the records he admits he

should not possess. He now seeks the judicial order he knows he should have secured before he took possession of these many pages of students' records.

The motion to dismiss for unclean hands had substantial merit. Since the decision on the motions was within the District Court's discretion, its failure to rule on it was necessarily an abuse of discretion. *Clark Fork Coal,* 2008 MT 407, ¶ 43.

CONCLUSION

Intervenor had and has a unique and enhanced expectation of privacy in these student records. It was error for the District Court to conclude Intervenor's privacy right disappeared into the ether when media began reporting the story or a book was published. Intervenor took care to protect his unique and enhanced privacy right, while Krakauer took every opportunity to destroy it and then perversely chuckle about it.

Montana Courts are open to those who abide the law and follow the rules. These hallowed thresholds should be blocked to Krakauer's unclean and illegal actions. The legitimacy of our judicial institutions relies on it.

Dated this 24th day of September, 2018.

PAOLI LAW FIRM, P.C.

By: /s/ David R. Paoli
David R. Paoli
257 West Front Street, Suite A
Missoula, Montana 59802
Attorney for Intervenor

Certificate of Compliance

I certify that this brief is printed with a proportionately spaced Times New Roman text typeface of 14 points; is double-spaced (except that footnotes and quoted and indented material are single-spaced); with left, right, top and bottom margins of 1 inch; and that the word count calculated by Microsoft Word is **4,019** words, excluding the Table of Contents, Table of Authorities, Certificate of Compliance, and Certificate of Service.

Dated this 24th day of September, 2018.

PAOLI LAW FIRM, P.C.

By: /s /David R. Paoli

CERTIFICATE OF SERVICE

I certify that on September 24, 2018, a true and correct copy of the foregoing was sent by U.S. Mail and/or electronically served to the following:

Peter Michael Meloy
Meloy Law Firm
P.O. Box 1241
Helena, MT 59624
Attorney for Appellee Jon Krakauer

Vivian V. Hammill
Helen C. Thigpen
Special Assistant Attorneys General
Office of the Commissioner of Higher Education
Montana University System
560 North Park Ave.
Helena, MT 59620-3201
(406) 449-9130
Attorneys for Appellant, Commissioner of Higher Education

BY: /s/ David R. Paoli

CERTIFICATE OF SERVICE

I, David Robert Paoli, hereby certify that I have served true and accurate copies of the foregoing Brief - Intervenor to the following on 09-24-2018:

Peter M. Meloy (Attorney)
2601 E. Broadway
2601 E. Broadway, P.O. Box 1241
Helena MT 59624
Representing: Jon Krakauer
Service Method: eService

Vivian V Hammill (Attorney)
560 North Park Ave., 4th Floor
Helena MT 59601
Representing: Higher Education, Office of the Commissioner of
Service Method: Conventional

Helen Clair Thigpen (Attorney)
560 North Park Ave.
P.O. Box 203201
Helena MT 59601
Representing: Higher Education, Office of the Commissioner of
Service Method: Conventional

Electronically signed by Rebecca Murphy on behalf of David Robert Paoli
Dated: 09-24-2018