SYNOPSIS OF THE CASE

2019 MT 153: DA 18-0374, JON KRAKAUER, Petitioner, Appellee, and Cross-Appellant, v. **STATE OF MONTANA, by and through its COMMISSIONER OF HIGHER EDUCATION, Clayton Christian,** Respondent and Appellant, v. **John Doe,** Intervenor and Appellant.[1]

Krakauer, a writer, sought the student education record of a specific student, John Doe[2], whom Krakauer believed was a prominent athlete and alleged to have committed sexual intercourse without consent. The University Court concluded Doe had committed the offense and sanctioned him to expulsion. Doe appealed that conviction to the Commissioner of Higher Education. Thereafter, Doe remained in school and continued to participate in athletics. Krakauer made a request to the Commissioner for Doe's student education records and asserted he had the right to inspect Doe's records under Montana's constitutional right to know. However, pursuant to federal and state law protecting the privacy rights of student's in their education records, the Commissioner refused to permit inspection or release of Doe's education records.

Following the Commissioner's refusal, Krakauer initiated a court action to obtain the records. In his first appeal to the Montana Supreme Court, the Court recognized that students have an enhanced privacy interest in their education records under both state and federal law. The Court remanded the case to the trial court to conduct an in-camera review of the records and determine whether the demands of Doe's enhanced privacy interest clearly exceeded the public's right to know. After conducting an in-camera review, the trial court ordered Doe's records be disclosed.

A second appeal followed. In this appeal, the Court recognized that the public has a weighty interest in understanding how the University and the Commissioner deal with sexual misconduct allegations. However, the Court explained Krakauer's interest in Doe's education records arose from Doe's status as a high-profile athlete. The Court concluded that a student's enhanced privacy interest is not dependent on the level of public interest in the student and that, consequently, Doe's status as a prominent student-athlete did not diminish his privacy interest. Further, the fact that some of the information contained in the records was already available to the public after Doe's separate, highly-publicized,

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[1] The Court prepared this synopsis for the reader's convenience. It constitutes no part of the Court's Opinion and may not be cited as precedent.

[2] "John Doe" is an alteration imposed by the Montana Supreme Court. Krakauer referred to the student by his actual name.

criminal trial, did not diminish his privacy interest. Finally, because Krakauer's request for information named Doe specifically, redaction of Doe's name and other identifying information would be futile. The futility of redaction left the enhanced and weighty privacy interest of the student unprotected and the enhanced privacy protection to be afforded that interest meaningless. Therefore, the Court denied Krakauer's request to examine the documents, determining the demand of Doe's enhanced student privacy interest in his records clearly exceeds the merits of public disclosure.

The dissenting justices believed the constitutional right to know provision required a limited release of information which set forth the Commissioner's decision and the grounds on which he made it, as a review of the decision reveals that it was premised upon process issues. The dissent maintained that the Commissioner is a high government official exercising statewide authority, and that the public's right to know encompasses a contested case involving a University matter and a student.