

## Transcript: October 15th, 2020

1. **Spencer Thomas Attorney for Mark Allen:** Your honor, this is Spencer Thomas. I'm I'm ready on the call.
2. **Judge Taylor:** You know, I I did remember your case, and I went by it, and it didn't go back, State versus is it Allen?
3. **Spencer Thomas Attorney for Mark Allen:** That's correct, your honor. He's present in my office.
4. **Judge Taylor:** Thank you for patiently waiting. What are we doing on this case?
5. **Spencer Thomas Attorney for Mark Allen:** Your honor, I believe this is Mr Leavitt's case, and he is on with the court that I can see, and I believe he has a motion for the court.
6. **Judge Taylor:** Okay. Mr. Leavitt?
7. **Spencer Thomas Attorney for Mark Allen:** I think he's muted.
8. **Judge Taylor:** Mr. Leavitt, you gotta unmute.
9. **Utah County Attorney David Leavitt:** How about that? Can you hear me now?
10. **Judge Taylor:** Yeah. I can.
11. **Judge Taylor:** Alright. Mister mister Thomas tells me you have a motion. The the case is here for scheduling.
12. **Utah County Attorney David Leavitt:** Right. It's based on it's based on an agreement that we have with with Mr. Allen, if I can put that on the record.
13. **Judge Taylor:** Sure.
14. **Utah County Attorney David Leavitt:** Mr. Allen, is going to agree, to waive his statute of limitations, with regard to this case, in exchange for the state's willingness to dismiss, without prejudice. And and and the agreement that the state has with Mr. Allen is that he will refrain from any kind of contact, direct or indirect, or even public reference to, this case or the victim in this case. And and if he if he violates that, a we will be able we we will be able to refile the case.
15. **Judge Taylor:** Well, I do have one question. It pops into my head. I haven't thought about it. I hadn't wasn't presented with this question before, but we have

an old adage in the law, which is that jurisdiction cannot be stipulated or created. It's either there or it's not. And the passage of the statute of limitations has I've always looked at it as it divests the court of jurisdiction. If it passes, can can the parties by stipulation waive the statute of limitations defense?

16. **Utah County Attorney David Leavitt:** The the statute of limitations is from my understanding is not a if the statute has passed, then there is no jurisdiction. But if the statute has not been if the statute has not passed
17. **Judge Taylor:** So you you could agree to toll it?
18. **Utah County Attorney David Leavitt:** We're going to toll it. Yes
19. **Judge Taylor:** You know, it's not a decision that would be made unless and until we were asked to go forward, and it can be taken up at that time. If you're satisfied that you're on solid ground and you're comfortable with that, I I don't have any reason to dispute it at this point.
20. **Judge Taylor:** Mister Mr. Allen, were you listening?
21. **Mark Allen:** Yes.
22. **Judge Taylor:** And do you understand the representation?
23. **Mark Allen:** I'm I'm trying to digest it all.
24. **Judge Taylor:** Well, do you need time to think about it with your attorney?
25. **Mark Allen:** I'm I'm I'm I'm good with it. He he he has explained something to me.
26. **Judge Taylor:** So alright. So the state moves to dismiss without prejudice on the condition that, the statute of limitations is waived so the case can be brought even if the that time has passed and, with the understanding that there would be no contact with, I guess, the alleged victim in this case, Mr. Leavitt?
27. **Utah County Attorney David Leavitt:** No no contact with the alleged victim, but also no discussion of the case nor of the victim on any public in any public forum, be it digital or otherwise.
28. **Judge Taylor:** Mr. Allen, do you understand that?
29. **Mark Allen:** Yes. Thank you.
30. **Judge Taylor:** And, Mr. Thomas, are we good?

31. **Spencer Thomas Attorney for Mark Allen:** Yes, your honor. This has been discussed. We agree to that.
32. **Judge Taylor:** All right. The motion is granted on that basis. Thank you.
33. **Spencer Thomas Attorney for Mark Allen:** Thank you very much.

## Transcript: November 3rd, 2021

1. **Judge Lunnan:** Case number is 211401656. Mr. Allen, I can see you're logged in. Are you able to hear me speaking okay?
2. **Mark Allen:** Yes, sir.
3. **Judge Lunnan:** Alright. The reason you're before the court is the State of Utah has filed a criminal charge, and they filed the charge of stalking a third degree felony that has a maximum possible penalty of up to 0 to 5 years in a state prison and a \$5,000 fine. I need to ask you, did you intend on hiring an attorney of your own choice, or did you want to ask the court to consider appointing counsel to represent you?
4. **Mark Allen:** Yes. The latter, your honor. I I've, spent \$40,000. I've lost my job and, so I do need a public defender if you would please assign me one.
5. **Judge Lunnan:** Alright. I need to ask you a few questions. First of all, you say you're not currently employed. Correct?
6. **Mark Allen:** Not not employed. Trying, but it's, it's been uphill.
7. **Judge Lunnan:** Alright. Do you own a home or do you rent?
8. **Mark Allen:** I rent.
9. **Judge Lunnan:** Alright. And do you have, dependents like spouse or children that, you support?
10. **Mark Allen:** My wife left 14 years ago and left me to raise children, but the youngest now is 17, and she's living with her sister because I can't afford to feed her.
11. **Judge Lunnan:** Okay. Alright. Well, based on the information you've provided, I am going to appoint counsel to represent you. It's gonna be someone from the public defender's office, the Utah County Public Defenders. We have several attorneys here from their office now. Maybe I can ask one of you to step in, and we'll
12. **Public Defender Jacobson:** Sure.
13. **Judge Lunnan:** Get information. Alright. So Mr. Jacobson, is online. I think you can see him maybe on your screen, Mr. Allen. Their telephone number is 801..... you need me to wait a minute?

14. **Mark Allen:** No. I'm good. Thank you.
15. **Judge Lunnan:** Okay. 801-852-1070.
16. **Mark Allen:** Thanks.
17. **Judge Lunnan:** Call call that office, make an appointment so you can go see someone over there so you can begin discussing your case and how, how you wanna go forward. Mr. Jacobson, in the interim, do you wanna waive a more detailed reading of the information?
18. **Public Defender Jacobson:** Yeah. The waiver reading, I would need a case number if I could. Case number is 211401656. And, Mr. Allen, let me ask you, I just need a little information. Is your correct address hang on. Let me pull up. The 1672 West, 630 North address?
19. **Mark Allen:** That's correct, your honor.
20. **Judge Lunnan:** Okay. And the correct date of birth is 1/29/62?
21. **Mark Allen:** That's correct, your Honor.
22. **Judge Lunnan:** Alright. I'd like you to give Mr. Jacobson your contact information, and that would be email and telephone numbers so they have that and they can reach you as well. Why don't you start with email and then go to telephone number?
23. **Mark Allen:** Sure. Email is markstewartallen@gmail.com. Cell phone is 801-462-6700.
24. **Judge Lunnan:** We're gonna go ahead and reset your case on the calendar for your next appearance, and that's gonna be December 1st at, we'll do this at 1 o'clock in the afternoon the same time. In the meantime, you wanna get in touch with, Mr. Jacobson's office, schedule an appointment so you can talk about your case, and then we'll see you on December 1st at 1.
25. **Lorie Hobbs:** Your honor? Yes. The state is asking that the court enter a no contact order. We did file that with the court.
26. **Judge Lunnan:** Alright. So what that means, for you, Mr. Allen, is that, you're not allowed to contact the alleged victim in this case in any form or fashion. That means through a text, email, through a third party. So in any way, you're not allowed to contact, that alleged victim. Do you understand that?

27. **Mark Allen:** Yes. And I have no desire to contact her, and I would like to ask for the converse in return because she's been meddling in the lives of my children.
28. **Judge Lunnan:** Well, just, the best thing to do if if she made contact, just turn the other way or hang up or just make sure you don't initiate any contact.
29. **Mark Allen:** No. I'd I'd like to stay a 1000 miles away from her, Your Honor.
30. **Judge Lunnan:** Okay. That's probably good.
31. **Court Assistant (Trina):** Really quickly. Ms. Laurie Hobbs is here on behalf of the victim. She's asking over the panelist. However, she's not connected correctly for me to do that. I've unmuted her. I don't know if she wants to address the court.
32. **Judge Lunnan:** Ms. Hobbs, are you able to hear, my voice? This is Judge Lunnan. I don't hear anything,
33. **Trina:** You say, I see your .... handle It looks like that she logged out and she's logged back in and and I just moved her over.
34. **Judge Lunnan:** Right. Let's hang on a second. Ms Hobbs, I just I can't hear you yet. Let's give you just give me a second. It'll connect. I don't think it's connected yet. Now now you just need to turn on your microphone down at the bottom.
35. **Lorie Hobbs:** Okay So many things to do. Okay. Do you need to add anything? Do you want anything on the record? We just wanted to ensure that the no contact order was in place, and Ms. Johnson took care of all of that. So I appreciate that. Thank you.
36. **Judge Lunnan:** Alright. That's taken care of. So, next year in December 1st at 1 o'clock. Alright. Thank you, Mr. Allen. You're welcome to log off. Don't forget to get in touch with Mr. Jacobson's office.
37. **Mark Allen:** Thank you, your honor. Alright. Thank you.

## Transcript: December 1st, 2021

1. **Judge Lunnan:** Alright. We're going to go and present your case. It's State of Utah vs. Mark Allen. Case number is 211401656. It's on the calendar for a waiver hearing. Mr. Parmley?
2. **Dustin Parmley:** Yes. Thank you. I've received the case. I've received, some discovery initial discovery. I think there's some discovery, that I have not yet received based on conversations with my client. So we're gonna be making some discovery requests on those as well as I haven't had any, communication from the prosecutor regarding any sort of offer at this point. So we would ask for a continue a continuance of the waiver hearing. Mr. Allen is not in custody. So if we could go after the 1st of the year, that'd be great.
3. **Judge Lunnan:** What about January 5th or January 12th of 1 o'clock?
4. **Judge Lunnan:** Either of those work for me. Why don't we go to January 5th at 1 o'clock?
5. **Dustin Parmley:** Thank you.
6. **Lorie Hobbs:** And your honor, this is Lorie Hobbs just making an appearance on behalf of the victim in this matter.
7. **Judge Lunnan:** Thank you for making the appearance, unintelligible, (overtalked by Dustin and Lorie)
8. **Dustin Parmley:** Hi Laurie.
9. **Lorie Hobbs:** Hi, Dustin. Yes. I've got it. Say it again.
10. **Judge Lunnan:** It's, January 5th at 1 o'clock. Okay. Thank you very much.
11. **Dustin Parmley:** Thank you.
12. **Judge Lunnan:** Thank you. We will see you all on that date?

## Transcript: January 5th, 2022

1. **Judge Lunnan:** The case number is 211401656. This is on the calendar for a waiver hearing. Mr. Parmley.
2. **Dustin Parmley:** Your honor, we're gonna need a continuance on this one for a couple of reasons. I filed a specific discovery request, that has not yet been responded to, as well as I noticed, brought to my attention yesterday, the alleged victim in this case has filed a lawsuit against the county attorney, David Leavitt, related to his conduct with respect to this case, which I think creates a conflict of interest with that office. So I'm looking at filing a motion to disqualify them, so that decisions made in prosecuting Mr. Allen are not, based on possible outcomes in a civil rights case in federal court.
3. **Judge Lunnan:** Okay. Well, it seems to me there's a clear conflict of interest if the victims filed a lawsuit against the county attorney's office.
4. **Male Court Assistant - unknown:** Sandy Johnson is listed as a participant or as an attendee. I believe she's counsel on this case. Alright. Let's get I didn't know who was you know, so let's see if we can get Sandy Johnson connected. I don't know if we
5. **Sandy Johnson:** .... Unintelligible...
6. **Male Court Assistant - unknown:** Mr. Allen, but I don't know if he can hear us or not. He's not logged in to the attendee thing correctly for me to move him over. I'm assuming that he can't hear or and he can't speak.
7. **Judge Lunnan:** Alright. We've got, Ms. Johnson connected, but we don't have Mr. Allen connected.
8. **Dustin Parmley:** So it looks like he's attempted to log in. I don't know. He can Mr. Allen, if you could send me a quick email or text, let me know if you can hear us. But other than that, I I I don't know.
9. **Judge Lunnan:** Alright. Ms. Johnson, did you miss that first part, Mr. Parmley was discussing?
10. **Sandi Johnson:** No, your honor. I heard his arguments and his request. The state doesn't have an objection.
11. **Judge Lunnan:** Alright. So, I assume that you're gonna work together to find another county attorney's office to, prosecute the case. Is that what you're gonna do? Or

12. **Sandi Johnson:** Ahh Your honor, I also just found out about this last night, so I would anticipate, having Mr. Parmley go ahead and file that motion. I I would anticipate we'd probably stipulate, but without having seen either knowing much more than just what I was told late last night, I can't respond at this point.
13. **Judge Lunnan:** Well, do you wanna push this out to February 9th? In that way, you can see what, you're able to agree to or not. And we'll
14. **Sandi Johnson:** That's fine. Stay, your honor.
15. **Judge Lunnan:** It'll still remain before me. It will just be prosecuted by another office if it's determined there's a conflict. At least on the appearance of what's been represented, it's a pretty clear conflict. But
16. **Dustin Parmley:** Thank you. Yeah. I'll get that motion filed straight away, as soon as I can get that prepared. And I did receive confirmation from Mr. Allen that he can hear today's proceedings.
17. **Judge Lunnan:** Alright. So we're gonna come back on February 9th at 1 o'clock in the afternoon for our next hearing, which is a waiver hearing.
18. **Dustin Parmley:** Thank you.
19. **Judge Lunnan:** K. Alright. Thank you.

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18. **Dustin Parmley:** Thank you.
19. **Judge Lunnan:** K. Alright. Thank you.

## Transcript: February 23rd, 2022

1. **Judge Lunnan:** State vs. Mark Allen 211401656 on the calendar for a waiver hearing. I know we had a motion, but I think that motion's been ruled on.
2. **Dustin Parmley:** Yes, your honor. There, the Utah County Attorney's Office has been disqualified. Looks like, Carl Holland from the AG's office entered a substitution of counsel for the state, and he's here with us. Because we've got a new prosecutor, Mr. Hollan and I have been, talking about, continuance and we've agreed, to request a 6 week continuance that would put us on, April 6th so that everybody can get up get up to speed.
3. **Judge Lunnan:** Alright. April 6th at 1 o'clock. Does that work for everyone?
4. **AG Prosecutor Craig Peterson:** Your honor, I actually have a federal jury trial that day. So if we could move it either a week before that or a week after that.
5. **Judge Lunnan:** So the week prior works fine, which is 5 weeks, March 30th at 1 o'clock. Does that work?
6. **AG Prosecutor Craig Peterson:** That works for the state.
7. **Dustin Parmley:** That works for me as well.
8. **Judge Lunnan:** Alright. Let's set it on March 30th at 1 o'clock.
9. **AG Prosecutor Craig Peterson:** Thank you.
10. **Dustin Parmley:** Thank you, Judge.
11. **Judge Lunnan:** We'll see you on that day. Thank you.
12. **AG Prosecutor Craig Peterson:** Thank you. And, Judge, that was my only matter. May I be excused for the day?

## Transcript: April 7th, 2022

1. **Judge Lunnan:** We're addressing State of Utah versus Mark Allen. The case number is 211401656. So on the calendar, we're wavering. We've got mister Parmley here on behalf of Mr. Allen And Mr. Allen by video and audio.
2. **State of Utah AG Craig Peterson:** Craig Peterson for the state of Utah, your honor.
3. **Judge Lunnan:** Okay. Thank you.
4. **Lorie Hobbs:** And Laurie Hobbs on behalf of the victim, your honor.
5. **Judge Lunnan:** Okay. Thank you for making your appearances. Alright. So waiver hearing Mr. Parmley? can we set a premium (unintelligible) , what do we need to do?
6. **Dustin Parmley:** At this point, your honor, I've spoken with Mr. Peterson. I intend to be filing a motion to dismiss this case, and we've discussed setting this out two months for arguments, that'll give us enough time to get briefing done.
7. **Judge Lunnan:** K. What what was the motion again? I missed the last word.
8. **Dustin Parmley:** Motion to dismiss.
9. **Judge Lunnan:** Okay. So, we need to do a briefing order. Do we need an evidentiary hearing or ?
10. **Dustin Parmley:** I don't think we need an evidentiary hearing, your honor. It's all based on information that was already put in the court record.
11. **State of Utah AG Craig Peterson:** I agree with that, your honor.
12. **Judge Lunnan:** Alright. How long do you think you'll need to get together and file the motion, Mr. Parmley?
13. **Dustin Parmley:** If I have 2 weeks, I can get it done by then.
14. **Judge Lunnan:** I'll give you 14 days. So let me pull up the calendar so we set scheduling. Hang on. So once you filed no later than May 13th, that gives you a few extra days.
15. **Dustin Parmley:** Thank you.
16. **Judge Lunnan:** And then, mister Peterson, when could you have a response, 2 weeks after that?

17. **State of Utah AG Craig Peterson:** I I can, your honor.
18. **Judge Lunnan:** We'll have your response by Friday, 9 27.
19. **State of Utah AG Craig Peterson:** I'm out of the office that day, your honor. Could could I have just Thursday or Tuesday 31st?
20. **Judge Lunnan:** Sure.
21. **State of Utah AG Craig Peterson:** It's it's Memorial Day weekend.
22. **Judge Lunnan:** That's fine. We'll do it on Tuesday 31st. And then, Mr. Parmley, if you wanna file a reply, if you feel if you need to, I'll give you 7 days from that date so you file something no later than June 7th.
23. **State of Utah AG Craig Peterson:** Thank you.
24. **Judge Lunnan:** Now I'm setting hearing date. Let's see.
25. **State of Utah AG Craig Peterson:** I'm in trial in June through 17th. So if we could set it any time after 20th.
26. **Judge Lunnan:** Trina, the only possibilities I'd see after 20th would maybe maybe be, from 4 to 5 on June 28. Well, we've got June trial set there. But I assume we're we're gonna stop early that day to do the 1st or maybe have somebody help do.
27. **Trina:** So, judge, we could put it on a 3 o'clock calendar on June 22nd.
28. **Judge Lunnan:** Well, Mr.r Peterson, when did you say you're back?
29. **State of Utah AG Craig Peterson:** I'm back on 20th, your honor. I'm in trial, in the Uinta Basin through 17th. It's a two week homicide trial. And so I'm back on Monday 20th. So I could do the 22nd.
30. **Judge Lunnan:** Alright. Let's do June 22nd at 3 pm in the afternoon.
31. **Dustin Parmley:** Thank you.
32. **Craig Peterson:** Thank you, Your Honor.

## Transcript: July 6th, 2022

1. **Judge Lunnan:** Okay. So the first one on 3 o'clock is State of Utah versus Mark Allen.
2. **Yeah. That is my case, and I'm ready to proceed.** (Assuming this is Dustin Parmley, though not explicitly stated)
3. **Judge Lunnan:** Alright.
4. **Court Assistant**  
Here's some of the Utah Attorney General's office, your honor.
5. **Judge Lunnan:** Great. Thank you, mister
6. **And Laurie Hobbs is here on behalf of the victim, your honor.**
7. **Judge Lunnan:** Okay. So this is 211401656. It's on the calendar for oral argument, I understand on a motion to dismiss. Have we had a response filed with a motion to dismiss?
8. **Public Defender Dustin Parmley:** Yes, your honor. Briefing is complete. There's been an opposition filed as well as a reply.
9. **Judge Lunnan:** Okay. I might have missed the reply, but I can look at it. If I have to, I'll take it under advisement. Are you ready to go forward with the arguments today?
10. **Public Defender Dustin Parmley:** Ahh, If the court hasn't read the reply, I'd prefer that the court read the full briefing before we have oral arguments.
11. **State of Utah Prosecuting Attorney Craig Peterson:** I'm okay with bumping it a week to allow that or two, whatever the court needs to do that, your honor.
12. **Judge Lunnan:** Let me take a quick look and see. I've actually I took quite a bit of time to research through this issue, and I'm guessing that replies not much different than what I've looked a research. Council, have you looked at all the case law on and I know that you're gonna sound odd, but I think it's related on defamation and statements made by parties in court proceedings. In pleadings in the courthouse. The reason I'm saying that is, I think there is a little bit of a connection regarding whats a public forum.
13. **Judge Lunnan:** Have you seen any of those briefings? I had this issue a while back, so I kind of diverted my attention to some of that case law.

14. **State of Utah Prosecuting Attorney Craig Peterson:** The state has not. My focus was kind of on the arguments that were made initially, so I didn't really go beyond that. So I have not researched into that area, your honor. No.
15. **Public Defender Dustin Parmley:** And, your honor, my reply did touch briefly on the First Amendment issues regarding public forums, and whether the courthouse is or the confines of a particular court case would count in that context, in the First Amendment context. I did not look at defamation law, in the court context.
16. **Judge Lunnan: So the reason I'm pointing that out is there's quite a bit of case law on protected speech.**
17. **Then they send in the *segments in red, women in background talking***
18. **Judge Lunnan:** And I think it does have some bearing on this, at least, collaterally. And that is whenever parties either file pleadings and make, you know, allegations towards another party or make statements in the courtroom. There's quite a bit of case law, and I think it's it's relevant. It's got some connection to this. Maybe I ought to take I need to have you take a look at that. I I'm I'll be honest right now. I'm concerned about this. I am concerned because it's a pleading, and I am concerned about whether or not this is a public forum or I'm just being straightforward with you now, but I want you to be able to argue with your side of the case. I don't wanna hide the ball here. I am really concerned about this. I'm wondering whether or not, of course, unfortunately, we've got contract law issues here because, technically, we're arguing contract law. And that means that we've gotta determine what the intent of the parties were in this contract. And does that mean that we've gotta consider for all evidence, or anything as a party discussed prior to this hearing where the quote was made regarding public forum and what the intent of the parties was. So that this is a very complicated issue on several levels.
19. **Judge Lunnan:** Much as I don't like to continue things maybe we should so I can read and I apologize that I should've ...I caught it early. I just didn't see it. I can read Mr. Parmley's reply and then maybe you can respond to some of the things I'm concerned about, and that is the case law surrounding defamation, what a public form is in those cases, whether or not, free speech is protected, uh and how making statements in court proceedings are considered to be, quote, protected speech. Uh, If you could look at that, that'd be helpful to me. And like I said, I wanna give you an opportunity to read that. I just, a I got diverted into that and it seems to be a (unintelligible) trough.

20. **Public Defender Dustin Parmley:** Thank you, your honor.
21. **State of Utah Prosecuting Attorney Craig Peterson:** Would the court like to set a supplemental briefing schedule to address the defamation issues?
22. **Judge Lunnan:** Yeah. Maybe we should. I don't know that we need to respond, but you could why don't I both have you submit something within 14 days of today's date? It's actually quite a bit of case law if you get into the protected speech. Ah, Just researching in Westlaw along with public forums and litigation. Umm.....And then we can set this up for oral argument. I'll make sure that I read the opinion. What about August 10th at 3 PM or August 17th at 3 PM?
23. **State of Utah Prosecuting Attorney Craig Peterson:** I can do either date. I would ask could we bump the briefing out 3 weeks to the 27th? That's only because I'm gonna be gone that second week from now.
24. **Judge Lunnan:** That's fine with me. If you wanna both submit something no later than July. Let's say July 29th, which is a Friday before 5 PM.
25. **Public Defender Dustin Parmley:** That works.
26. **State of Utah Prosecuting Attorney Craig Peterson:** That works.
27. **Public Defender Dustin Parmley:** And either one of the dates suggested by the court works for me for, our
28. **State of Utah Prosecuting Attorney Craig Peterson:** Yeah. Whatever's You may wanna look to see whatever's lightest on your calendar right now. Although, right now, I'm scheduled for trials until 3 years after I retire.
29. **Public Defender: Dustin Parmley laughter**
30. **Judge Lunnan:** Yeah. It's 2 of us. Probably 17th August is the lightest date. Why don't we set up the 3 PM oral argument on August 17th?
31. **Public Defender Dustin Parmley:** Thank you.
32. **Judge Lunnan:** Trina, am I right? Is that the lightest date we have for oral argument or evidence?
33. **Trina:** Yeah. Judge, either the 10th or 17th will work right now.
34. **Judge Lunnan:** Okay. Let's do 17th at 3 PM.

35. **State of Utah Prosecuting Attorney Craig Peterson:** That'll work for the state, your honor.
36. **Public Defender Dustin Parmley:** Thank you.
37. **Judge Lunnan:** And this time, I won't miss one. I'll read off the two supplements in your reply, Mr. Parmley. Okay. Sorry about that. We'll see you back on the 17th.
38. **State of Utah Prosecuting Attorney Craig Peterson:** Thank you, sir.
39. **Judge Lunnan:** Thank you.

## Transcript: August 17th, 2022

- Judge Lunnan:** Let's go ahead and see if we can address our 3 o'clock matter. It's 3:14. Let's see if we have everyone here. So, council, let's try to address state of Utah versus Mark Allen. The case number is 2114011656. Matters on the calendar for oral arguments on a motion to dismiss. It was filed by Mr. Parmley on behalf of Mr. Allen. Mr. Parmley is present, looks like we have, Craig Peterson on behalf of the AG's office, and Mr. Allen's present. Who else do we have present in this case that's involved with this case? Anyone?
- Lori Hobbs:** Lori Hobbs on behalf of the victim, Your Honor.
- Judge Lunnan:** Okay. We've got Ms. Hobbs here. Thank you. Okay. Uhh This is your motion to dismiss, Mr. Parmley. I've reviewed all of the briefing that was filed by both parties, um, the supplemental briefing I've read through. You know, what I think the thing that concerns me the most about this is, I I went back and looked at the minute entry. Of course, this was not my case. This was before Judge Taylor, I believe. And when this order was or when this hearing was held, there's no actual written contract or written agreement. It's just an oral statement on the record. And, you know, it's cited in, your briefing.
- Judge Lunnan:** At first glance, it's not the most clear iteration of what the ground rules are for going forward. Basically, all it says is, a not allowed to make any statements in a public forum, and that those are the words that are used. Public forum is not defined during that hearing. Um My evaluation, it has been similar to evaluating a contract, And that is, a I would consider this an oral contract, but I would need some some sort of what we call parole evidence or some type of testimony or otherwise for me to show that the parties clearly understood what public forum meant. That's one of the issues that I'm concerned about. Um If you look at the general definition of public forum, this meets it. It was in a Court during a Court proceeding. It involved the parties in the case. Um so the privilege issue is kind of another issue, but we also have a contract issue about whether or not there was even a meeting of the minds here on on what the terms of this so called contract were between Mr. Allen and the state. Umm So we probably have to address the contract issues. We probably have to address, a the judicial privilege issue. I'll say this. You know, I I looked at the the, motion to expunge, I don't know that I'd grant it, to be honest with you. I'm just being very forthright in what I'm telling you that it doesn't seem to be that Mr. Allen has provided the right information for a Court to consider expungement because it seems to me there's

no remorse,..... But that's another issue. That's entirely another issue.

5. **Public Defender Dustin Parmley for Mr. Allen:** Another Court has already addressed the petition to expunge and and denied it. So that's not even gonna come before the Court.
6. **Judge Lunnan:** Correct. The other thing I was thinking about is, you know, I noticed that judge Taylor accepted this, agreement to stay, ah limitations period on stalking and filing for stalking. I haven't seen any case law on that. I assume maybe you can contract to do that, but I don't know.
7. **State of Utah AG Prosecutor Craig Peterson:** And Your Honor, that is not an issue in the present case because the case was was refiled within the statute of limitations.
8. **Judge Lunnan:** Right. So let me hear your arguments based on my initial observations. Let's start with you, Mr. Parmley, and then go ahead and turn to Mr. Petersen.
9. **Public Defender Dustin Parmley for Mr. Allen:** Thank you, Your Honor. As far as the definition of public forum, it means different things in different context. In the First Amendment context, the Courthouse is not a public forum. It is considered it is designated as a non public forum because not anybody can speak in a in a Court case. It's limited to particular participants. It's limited to particular subject matter. Umm, So in in in that First Amendment context, and which is the only context in which public forum has been defined by by a Court, a Courthouse and and a Courtroom in a Court case is not a public forum. Umm, It is a forum that it is a place where people can speak. A public record is created or a record that's accessible by the public is created. But it's not a place for the public to generally come and openly debate issues. Umm, It's, it's limited to the particular cases before the Court, and the particular litigants before the Court.
10. **Public Defender Dustin Parmley for Mr. Allen:** Umm So in that context, with a with an undefined term in the agreement, we really don't know, what public forum is or what it was understood to be. And in general, contract principles, whoever the any ambiguity is is constructed against the articulator of the contract, the the person or the draft of the contract in the case of of a written contract. In this case, it was the county attorney who articulated the terms of the contract, which Mr. Allen agreed to. And so those terms need to be construed

against the State. Umm, Again, as also in general terms of of criminal law, any ambiguities are con are construed against the state. That's true as a matter of construction of statutes, It's true as a matter of construction for, plea agreements. It's it should be true as a matter of construction here, that if there is an ambiguity, if something is not clear, it's the State that bears the risk of any any ambiguity. Umm With that in mind, Your Honor, Mr. Mr. Allen filed a petition to expunge his his criminal arrest and his, the prior criminal case, which if granted would effectively take it out of the public eye. It wasn't intended for these statements to become a matter of of of public awareness. It was intended that these statements might assist him in shielding it from public awareness. The intent of the, agreement with the State was to protect the, the alleged victim from further harassment by, by Mr. Allen so that there will be no contact between them, as well as, no publication of of of anything related to, the alleged victim or to the case so that that she would be protected from future involvement with Mr. Allen. The petition to expunge is a petition asking a Court to make this secret, to take it out of the public eye. So when you're looking at the intent of the agreement, as well as the intent of Mr. Allen in in taking this action, he didn't intend to display to the world all of the alleged faults and flaws of of the alleged victim here, or any any of his issues that he had with, with the case or with with the victim. He his intent was to try to make it, to put closure on it so that that it would no longer be a matter of public record. So that, Your Honor, in that respect, we're asking the Court to find that Mr. Allen did not violate his agreement with the State and to enforce the agreement with the State against the state and require that this matter now also be dismissed. And and that's the argument. If the Court has any questions, any more specific questions, I'm happy to address those.

11. **Judge Lunnien:** You addressed in intent, what is intent was. Should the Court consider the extent of the statement that he provided in his motion to expunge to show what his intent was? Because, generally, you know, when I see motions to expunge, they're very short. They don't involve a diatribe that's 50 pages long. This is pretty unusual. It seemed like there was a lot of information that's not needed and, that doesn't need to address the issue of expungement.

12. **Public Defender Dustin Parmley for Mr. Allen:** Your Honor, one of the issues regarding expungement that, that Mr. Allen and is contained on the form itself is and in the statute is is the Court is required to find that it expungement would not be contrary to the interest of justice. So Mr. Allen's petition was an attempt to satisfy a Court that the interest of justice favored expungement. And in Mr. Allen's mind, did and he was not represented by an attorney, by the way,

during this expungement process. He was doing this pro se with his own reading and understanding of the law. Umm, That these perceived injustices on his part, that that he perceived as as faults in the system or or, injustices he had suffered as part of, being prosecuted, were reasons to to grant the expungement. Reasons why an expungement would not be contrary to the interests of justice. I would not fault Mr. Allen for putting all the information that he felt was relevant to that decision being that he is not an attorney, Your Honor. Better to present more information than than be denied on on having presented not enough information. Umm I think also legally, one of the arguments that we made, Your Honor, too, is is that it cannot be the case that a defendant is or without without being incredibly explicit and clear and specific, that this contract cannot mean that he that Mr. Allen, is prohibited from pursuing available remedies in in the future, in regards to his own case. A contract so for example, a hush agreement cannot, umm, how do I put this most clearly? It doesn't mean and it can't mean that no more filings can be made in an individual case. So if somebody breaks the agreement, for example, ah even if there is a confidentiality agreement or a non publication agreement, the parties can still make whatever filings are necessary to vindicate those rights in in the individual case. Umm, This is that same type of situation. It cannot cut out from underneath him an available filing to him, which which is the petition for expungement. That process to seek something that is available to criminal defendants generally under the law when a case is dismissed. Umm, So Your Honor, we'd ask the Court to interpret the agreement not to prohibit the this particular action that Mr. Allen took, the the petition for expungement?

13. **Judge Lunnan:** Mr. Peterson. There you go.
14. **State of Utah AG Prosecutor Craig Peterson:** Yes, Your Honor. I as I listened to the arguments, and and I understand, where, Mr. Parmley's coming from. I think, a contract's a contract, and the the State was really troubled on two parts. Right? The first is the contents. I mean, the the diatribe, that was listed in 60 plus pages was far beyond what was needed for for the, petition to expunge. And one of the arguments we made, and I I I granted, I think in writing, I did it ineloquently. But, you know, the right to an expungement is not constitutional. It's statutory. And because it's statutory, it has conditions that the the legislature placed on it. And one of those is is if a case is dismissed without condition, or with conditions.
15. **State of Utah AG Prosecutor Craig Peterson:** And so in this case, there were conditions, and and Mr. Allen knew that there were conditions. So much so

that when he filed this petition for expungement in the check the box, there's a specific thing where it says one of the following has occurred and the box is the case was dismissed without prejudice or without condition. And then there's 2 boxes beneath that, which is either the prosecutor consent or they're at least a 180 days. And he checked the 180 days, but he didn't check the box that the case was dismissed without condition because there were conditions. Because conditions can be placed on dismissal.

16. **State of Utah AG Prosecutor Craig Peterson:** That is available, uh, to the prosecutor and the defendant is to place conditions on a dismissal. And those were done, and those were placed on the record. So he knew he wasn't eligible for an expungement, yet he did it anyway, and he did it in a way where he attacks the victim. He brings up the case. He does everything he's not supposed to do that the agreement says you're not supposed to do. So when we look at judicial privilege, we didn't file a new case against him, for it. We didn't file criminal liable or or defamation or any of those things. What we simply did is acted on the contract, which was he violated it. The terms were if he did and they're specific. If you do, we will refile. The state will refile. And that's all that the state did was refiled it. But it's really two things. If I take away the Freedom of Speech issue and that, he has some privilege on what he said, he's still trying to torch the agreement by expunging it. He's still trying to do that knowing he wasn't eligible for it. He didn't even check the box because he knows he's not eligible.
17. **State of Utah AG Prosecutor Craig Peterson:** So his actions were to try and torch this agreement, and he specifically asked within the context. I record (request) the Court order an expungement in this case and order the state, county, and local government agencies to expunge related records. This isn't he's trying to hide it. He's trying to seal it so it's out of public eye. He's trying to torch it. He's trying to expunge it altogether. That's also violative of the of of this contract, and the only remedy the State has at that point is to refile the charge, which is what was done. So from from our perspective, it it was explicit. He knew it. This is not an available remedy to him, contrary to what counsel said. He's he's availing himself of a remed he knows it's not available. The statute says it's not available because there are conditions. This wasn't a dismissal without condition. So this isn't a hush agreement. This was conditions based on dismissal. This was agreed upon. That is something that is accepted and acknowledged under the statute and so where the statute allows for a dismissal with conditions, and then if there is a dismissal with conditions, you either need the prosecutor's approval or those conditions to go away. Those conditions

haven't gone away. The statute hasn't expired. The refile is justified. The dismissal should not be granted, and the case should be allowed to go forward. Court, do you have any questions for me? I'm trying to keep an eye on the time. I know we're running low here.

18. **Judge Lunnan:** A few questions. So expungement, wanted to ask you if you disagree. To be expungement, doesn't dismiss a case? What it does do is it takes it off the record in general so that someone can't look it up. Now if he had a conviction, which there wasn't, that'd be a different story. But in this case, it was expunging the proceedings. Umm, I don't know. I don't see this as filing this as dismissing the case because there's no case file. What it, and I don't see it preventing the State from filing it if he violates the agreement. Umm, tell me if you disagree with that.
19. **State of Utah AG Prosecutor Craig Peterson:** Well, I I disagree because if it's expunged, then it gets removed from the record. It gets removed from the docket and not only and now is it not part of the Court's record or docket, and the terms and conditions, as the Court pointed out are on the record in this case, you know, they're part of the minute entry, that goes away, but then all the police reports and everything get expunged and removed. And and that's not simple access. That's not, hey. You know, the the rule is against reopening those things that once they've been expunged. It's very, very difficult. And and so an expungement is de facto would be torching it. And it's not just the case would be gone, but the agreement would be gone, the police records would be gone, and those aren't easy things to go resurrect after the fact when an expungement's been entered.
20. **Judge Lunnan:** Well, I I disagree somewhat. But, let me move on to another question. This this was done in a filing, not a hearing. So, uh traditionally, Court proceedings are not considered public forums in the case law. I I I think that's a given. The of all the cases that I've looked at, and now granted, there there are different issues with regarding to defamation, lawsuits, etcetera. However, the definition of public forum is not necessarily, a hearing, uh etcetera. This was actually a filing, so in some ways, it's even more removed from a public hearing because sometimes people can't.... hearings are public, and you can attend a criminal hearing or a civil hearing. To some extent, that doesn't make them a public forum, but they... public has access. In this case, it's a filing, it's not a hearing. What do you think about that?

21. **State of Utah AG Prosecutor Craig Peterson:** Well, I you know, I think that's the the way I look at what is and is not a public forum, a pleading is on the case, it's accessible unless you seal it or you designate it as private, and those things can be done. That wasn't done. Once it's filed, it's accessible by the public. Anybody can pay their fee to the Court, get on **Exchange and if they don't wanna do that, they can come down to the Courthouse and look at the files. They have public access, this is how 90% of the cases I file end up in the Salt Lake Tribune the next day with my probable cause statement being written out.** There is no hearing. There was just a filing, and the public had complete access to it. This is something to which the public has access. Granted, somebody's gonna come look for it just as you go to a public library and if you want something in that public forum you have to go look for it, but it's there and it's available. So I really think when it comes down to it, it's it's does the public have access to this? And the answer is yes. They do.
22. **Judge Lunnen:** So, Mr. Peterson, have you found any case in the entire United States that describes filing a document in a public in a Courthouse is a public forum?
23. **State of Utah AG Prosecutor Craig Peterson:** No. No. Your Honor.
24. **Judge Lunnen:** Alright. I'm gonna grant the motion to dismiss this information based on the following grounds. One, the Court's considering this to be a contract and the terms in this contract are vague and they need to be contract law by every state is that you construe vagueness against the drafting party. In this case it's the county attorney, Mr. Leavitt making a record, about using the words that, "he can't make statements in a public forum" it was never defined during the proceeding. Public forum um Court proceedings have never been defined as public forums. A forum is where you publish something and make it available to everyone. I don't believe that this can reasonably be interpreted to be a public forum. Was it foolish, was it maybe intended to to a cast aspersions, or whatever? Perhaps. However, I can't interpret this as a Court -based on the case law and everything that I've read as this filing being a public forum. Even if I did, this would likely be overturned on appeal. There's just no support for it in the

law. Umm, most of the support that's been described here is, a the harm that it might have done, and I haven't heard anything on that and that's not the issue here. As you know, as both of you know, and this is part of my findings, when pleadings are filed in civil and criminal cases, they often cast aspersions in motions, in, you know, all pleadings that are filed there'll be allegations made about one party or another that could be total untruths. And those aren't actionable because they're filed in a Court proceeding. Statements made on, under oath in the Courtroom are not public forums. I've seen case law that talks about cases where you're going out on the steps of the Courthouse and start making all kinds of statements, that's a public forum.

25. **Judge Lunnan:** I think that the reasonable interpretation of public forum in this case and for any person to interpret it this way would be, I can't get on the social website and make statements about this case. I can't use any kind of social media. I can't go to the public. I can't write anything. I can't go on FaceTime or.... Those are considered, as we all know, as public forums. However, traditionally, and in the case law, filing a pleading is not considered a public forum. And, again, I'm deciding this Mr. Parmley, this is for you to know. because I'm deciding this based on contract law because of the vagueness it's construed against the State.

26. **Judge Lunnan:** I'm deciding in this on this is not a public forum, as defined by every Supreme Court in the United States, including the United States Supreme Court, as defined -filing pleadings as not being a public forum. So that'll be the basis for my order denying or granting the the, motion to dismiss. I'm doing it without prejudice and the reason I'm doing it without prejudice is because you do have a contract and that means the statute of limitations is waived by uh Mr. Allen, uh in this proceeding and it was clear that there was a lot of discussion about waiving that statute of limitations, and he agreed on the record. Whether or not that's something that can be done legally, I I don't know the answer, but I wasn't researching that. My advice to Mr. Allen would be you better be damn careful the way you express this in the future because this is by this is granted without prejudice, that means it can be refiled anytime the State believed that you violated that contract. I would suggest to Mr. Allen, and maybe you can give

him this advice, Mr. Parmley. I know he's here. He may not wanna step too close to that cliff.

27. **Public Defender Dustin Parmley for Mr. Allen:** Thank you..
28. **State of Utah AG Prosecutor Craig Peterson:** We appreciate your time.
29. **Public Defender Dustin Parmley for Mr. Allen:** Would the Court like me to prepare a written order to that effect?
30. **Judge Lunnan:** Maybe do some findings of fact, conclusions and um and pass it by Mr. Peterson and if it's approved by both of you I'll sign it. Thank you.
31. **State of Utah AG Prosecutor Craig Peterson:** Thank you Your Honor
32. **Lorie Hobbs for Koehler:** Thank you.

1. **Judge Lunnan:** Good afternoon, everyone. This is Judge Lunnan. Let me see if we can have Mr. Peterson turn on his video. Thank you, Mr. Peterson. We're going to address State of Utah vs. Mark Allen, a, case number is 211401656. We have um Mr. Dustin Parmley here who was counsel of record for Mr. Allen. We have Craig Peterson on behalf of the Attorney General's office, and Mr. Allen's present, um I actually asked for this hearing...
2. **Judge Lunnan:** Mr. Allen has been filing a number of pleadings in the docket and I'm seeing all of those pleadings but the pleadings that have been filed are being filed in a closed case. Because the case number I have which was the old criminal case, a, its been dismissed.
3. **Judge Lunnan:** And the problem Mr. Allen, is the reason I wanted to have you come is to explain that anything you file in that case I can't consider because its closed. You've filed for example a number of documents one in particular theres been a petition under 42 U.S.C. § Section 1983. That can be filed in State Court although you ought to talk to an attorney because the remedies in state court are a whole lot less than they are bases on immunity differences it better to file something like that significantly in federal court, because the federal statute 42 U.S.C. § Section 1983.
4. **Judge Lunnan:** I am not an expert on that but, the biggest problem that I have now is you are kind of wasting your time filing these in a case that has been dismissed because I have no jurisdiction to enter these any of these on the record frankly due to differences in immunity.
5. **Judge Lunnan:** You'd have to open a civil case and file those pleadings in a civil case, um and generally 1983 actions are not filed in State Court anyway, they can be umm, but as I said the remedies are different. Mr. Parmley let me let you speak.

6. **Mr. Parmley:** Thank You Your Honor, I filed a yesterday a Motion to withdraw as counsel because the case has been dismissed. These filings have been submitted by Mr. Allen without consulting our office, and a frankly they go far beyond the scope of representation and services we provide with the public defenders office We we move to withdraw at this time.
7. **Judge Lunnen:** I'll grant your motion to withdraw.
8. **Mr. Parmley:** Thank you Your Honor.
9. **Mr. Allen:** Thank you Dustin. I appreciate your help.
10. **Dustin:** Thanks Mark
11. **Mark:** Your Honor, if I may ....
12. **Mr. Peterson:** Your Honor, may I interject for a second?
13. **Judge Lunnen:** A sure
14. **Mr. Peterson:** Okay let me, I'm going to kind of give you the low down on why I think we are here. Umm,
15. **Mr. Peterson:** This case was tied to another case, that case number was 191400132, and this was the case where the Court may recall it where originally criminal charges were filed initially filed against Mr. Allen in 2019. That case was dismissed with conditions, so basically almost a diversion type of agreement. Then in 2021, David Leavitt's office decided that Mr. Allen had violated those conditions when he filed a motion to expunge or something along that nature that had a lot of allegations involving the victim. So they refiled the 2019 case and when they refiled it they didn't file it under the old case number, they filed it under the new case, under this case number 21.

16. **Mr. Peterson:** Back in 22, a Mr. Parmley referred in 2022 Your Honor said that "Mr. Allen basically had immunity on the pleadings, and there was no basis for the refile in 21" and so you dismissed the case, did it without prejudice and at that time reminded Mr. Allen that he still had the obligation to obey the Orders, or the agreement of the 2019 dismissal. That part you are aware of.
17. **Mr. Peterson:** What you are not aware of and this is where I am a little troubled that we are here is on October 10th of 2023, so last year in October. We, Mr. Allen and I went before Judge Brady and the reason we were before Judge Brady is because he was the judge who was assigned to that original case, the 191400132 case. And at that time, a Motion was made to consolidate the two cases, this one 211401656 into 191400132 because they were defacto the same case.
18. **Mr. Peterson:** And then the Motion was once that consolidation happened 191400132 would then be expunged, the certificate, the Petition for expungement would be granted and I stipulated to that.
19. **Mr. Peterson:** What happened is, the case, 191400132 got expunged prior to this case getting merged into it. So this case is a bit of a dangling chad and I think part of the frustration is I am understanding and from Mr. Allen is, this case shouldn't even be a case of record anymore, you shouldn't even, there shouldn't be a file even to file these things under because it should have been expunged back in October of 23.
20. **Judge Lunnan:** I do have a Motion to expunge that's filed now for Mr. Allen that he filed that actually I could grant, there is no reason why I can't except it sounds like we have a little complication with it being consolidated.
21. **Mr. Peterson:** Well it, the other case was expunged prior to consolidation and and because it was expunged that motion and order don't exist anymore. They are gone. and so the State would on the record today stipulate to the expungement of this case.
22. **Mr. Allen:** Your Honor.....

23. **Judge Lunnan:** Hang on one second Mr. Allen. I do want you to speak and ...
24. **Mr. Allen:** Thank you.
25. **Judge Lunnan:** I just want to clarify some things for, so a, as I said I now have a motion to expunge that Mr. Allen has filed in this 2021 case, and I am prepared to which I could grant it, it sounds like you have no opposition.
26. **Mr. Peterson:** Correct.
27. **Judge Lunnan:** The only thing I need to wait on Mr. Allen is because there is an alleged victim in this 21 case, I have to wait by law 60 days to make sure they don't have an objection to the expungement, or the prosecutor needs to tell me, that they have checked with the (alleged) victim and the (alleged) victim doesn't have any objection to the expungement. And so that 60 days runs up on October 13th.
28. **Judge Lunnan:** Ahh and so my intent is, if there is no objection to it I am to grant the expungement in the 2021 case of the one that we have here (211401656) but the main reason that I wanted to hold this hearing was to try to help you not waste your time filing more documents in this case, and that is a 1983 action, you filed a Coram Nobis and really a Coram Nobis has been uhh done away with in the State of Utah by statute, its the same thing as a post conviction relief act claim, which is a civil action and it has to be filed by a party to address by Habeas Corpus their conviction, in this case, you don't have a conviction and so it, it can't be filed in this case and Utah doesn't recognize Coram Nobis anymore because it was amended by the post conviction relief act.
29. **Judge Lunnan:** Umm, in the past that was a valid claim, that was a valid petition, but it had to be filed civilly in a different proceeding you couldn't just file it in the old criminal case and obviously you can't file a post conviction relief act case when there is no conviction. Ahh its only filed where there is conviction filed in the record. And so, uhh, I didn't want you waste your time and money filing more documents when I have no jurisdiction or authority to

even look at those or respond to, or allow them to have any meaning in this case because its dismissed. Go ahead.

30. **Mr. Allen:** I appreciate that and Attorney Peterson and Judge Lunnen I did not put that flurry of papers into the record with any ill intent, there's a criminal investigation that is going to start in reference to false police reports from 2017 and 2018, so I've petitioned the Court to toll the expungement pending the investigation of criminal allegations.
31. **Mr. Allen:** I did have a choice to file in Federal Court but I was hopeful that Attorney Peterson would like to do a conference, there is some evidence that he has not seen, there's still 11 pieces of evidence that I should be getting next week, but this document here that came from your court in December of last year says there was never any protective orders, so the mere fact that I have to appear again is a due process violation. Mr. Peterson came in at the tail end of a legal train wreck as you have yourself Your Honor and I apologize for wasting the Courts time, I've been made homeless, there were 30 prosecutors in Leavitt's office that got fired.
32. **Mr. Allen:** I think they ought to have an opportunity to be heard to help fill in the blanks, so that's the reason why I'd like to have my expungement tolled pending the criminal investigation. I've also filed a motion to ask for injunctive protection against those who have demonstrated ill intent. David Leavitt refiled the, he dismissed the 191400132 case after he had viewed a 33 minute video that I don't think Mr. Peterson or any other prosecutors have viewed, its got some sensitive 412 evidence and I was sexually assaulted by my accuser and the State's witness, and that demonstrates such.
33. **Mr. Allen:** So the refileing of the 211 case was not a diversion, that's a false premise, it was done in retaliation and I have evidence that demonstrates such and I will be presenting to a special investigator, I don't want to go to the DOJ or the U.S. Attorney for the State of Utah, but I could, but my goal first between now and October would be to meet with Mr. Peterson, you've got people in your office who. I think are really good and honest people. Carl Hollan is a good man. He recused himself early on

because he realized there had been some criminal and due process violations by Leavitt.

34. **Judge Lunn**: ... and ...When you say "in your office" remember Mr. Peterson is with the Attorney General's Office. I think... is Carl Hollan at the AG's office now?
35. **Attorney Peterson**: He is Your Honor. He's with our office now, he's been with us for a few years now.
36. **Judge Lunn**: Of course the point I was trying to make to help you is I have no jurisdiction to respond to any of the pleadings you are filing in a closed criminal case and they can't even be considered, but you want to file a civil complaint you can do that including a 1983 action but it has to be filed and you can request there be no fee, in other words,,,
37. **Mr. Allen**: I understand Your Honor. What is still I believe in your jurisdiction is to Dismiss with Prejudice my case, this one should have never existed but if it gets expunged then we are covering up criminal evidence that will have to be opened back up same as 191400132 case.
38. **Mr. Allen**: However, I've also filed a motion to toll the expungement due to an ongoing criminal investigation into false police reports from 2017 and 2018. I would prefer to wait on the expungement until the investigation concludes.
39. **Judge Lunn**: Do you want to withdraw your Motion to Expunge?
40. **Mr. Allen**: I don't want to withdraw, I just want to toll it pending a criminal investigation by P.O.S.T. and by the State AG's Office and potentially by the U.S. District Attorney for the State of Utah.
41. **Judge Lunn**: Have you filed anything to stay my ruling on the expungement?

42. **Mr. Allen:** I did I filed a Motion to Toll pending criminal investigation by a third party.
43. **Judge Lunnan:** Was that just filed recently?
44. **Mr. Allen:** That was filed within the last two weeks, I believe.
45. **Judge Lunnan:** Alright I don't have any problem not signing the Motion to Expunge if that's what you want to do, umm..
46. **Mr. Allen:** I'd like to toll it so that, what happened is, this is all been a train wreck and Craig I am sorry that you have had to waste anytime on it. Carl Hollan works in your office, Bethany Warr works in your office, The Governor now has Katie Fox works out of his office. I would hope that we could have Tyson Downey appointed as a Special Investigator to try and undo the damage which has been done to some of your team members. There's 30 other prosecutors out of which I think 28 are good people, they were harmed by Leavitt's misconduct. I filed the first Bar complaint him and so now he is living in Scotland, thats why I filed asking for a bench warrant so that we can undo the collective cumulative damage. I
47. **Judge Lunnan:**)...and You filed the Request for a Bench Warrant in this court in this my case this 21 case and its assigned to me that's been dismissed and so the problem is I have no authority to issue a bench warrant.
48. **Judge Lunnan:** I'll hold off on signing the expungement order if that's your request.
49. **Mr. Allen:** I understand. My hope would be to have a conference with you Craig and also Justin Seitzinger and maybe Jeff Gray and show you the video evidence of potential criminal conduct, provide the posting,
50. **Mr. Allen:** I believe there is probable cause for a bench warrant and I also believe that you and I are on the same side of the Constitution and that we are on the same side of the Utah Constitution and the Code of Ethical

Conduct and the Judicial Rules of Conduct, I think we are all three on the same side and I would like to have a Conference with you so that you can understand the opportunity we have to restore justice to Utah County and the State without me having to come at you as an adversary. When I worked with Stephen Covey....

51. **Judge Lunnen:**....Hang on one second..this is a conversation that I probably should not participate in, remember you have Mr. Peterson who is part of the Executive Branch, I am part of the Judicial Branch and so any conversations that you might have with Mr. Peterson about investigations I should probably not participate in at all.
52. **Mr. Allen:** That's fair enough. Craig would you be willing to do a conference between now and October 13th?
53. **Mr. Peterson:** ... and the short answer is no and I'm in kind of the same position that Mr. Parmley was in. My appointment was limited to the prosecution of the case and the minute the case was dismissed, I'm out!
54. **Mr. Allen:** Okay, That's fine.
55. **Mr. Peterson:** I don't have any other involvement in the case ..... other than to say the State has no objection and will stipulate to the expungement.
56. **Mr. Allen:** Well I'd like to continue to have the expungement tolled pending a criminal investigation by a third party and I believe that the Court has an obligation to report the misconduct of potential 1983 and 1985 (violations) as well as to the Utah Bar.
57. **Mr. Allen:** I believe Craig, with all due respect I know its painful, but I believe you've got an obligation to report and I didn't want to make any other people participants in this case, I was trying to have a conference with you so that we could try and put out the forest fire that I have endured for 7 years.
58. **Mr. Peterson:** Well, that's my point - I am limited to the prosecution of this case, I have no other authority, I have nothing else to do with anything

so, I ... I'm not a good resource.. for you.

59. **Mr. Allen:** I understand, but you do have an obligation to the Ethical Code of Conduct which has been violated and Your Honor with all due respect you do as well and so does Judge Brady, theres been....
60. **Judge Lunnan:** I disagree and I'll tell you why Mr. Allen that I disagree. Uh Officers have, yes we are all lawyers and have a Code of Ethics, and we have ultimate obligation to report criminal conduct, but its only criminal conduct where we know the facts and we believe based on those facts that there is criminal conduct that has occurred and right now I know nothing about anything and I doubt Mr. Peterson does either about the allegations you are making because I
61. **Judge Lunnan:** I disagree and I'll tell you why Mr. Allen that I disagree. Uh Officers have, yes we are all lawyers and have a Code of Ethics, and we have ultimate obligation to report criminal conduct, but its only criminal conduct where we know the facts and we believe based on those facts that there is criminal conduct that has occurred and right now I know nothing about anything and I doubt Mr. Peterson does either about the allegations you are making because I wasn't even around during the time you are, and neither was Mr. Peterson.
62. **Mr. Allen:** I totally agree...
63. **Judge Lunnan:** ... Generally we have a duty to report criminal conduct, I agree, but its only criminal conduct when we have knowledge that criminal conduct has occurred... and I don't know any of the facts in your case, nothing!
64. **Mark Allen:** Well, I started my conversation saying you are both coming in at the tail end of a legal train wreck, so I know you are only seeing the tip of the iceberg and the tip of the iceberg was provided by your office that just said "look there was never any protective order there was never any stalking injunction (Exhibit Dec 20th 2023 letter from Court). So I have survived 4 court cases that were predicated upon Constitutional violations. So I get it that you don't .... You are coming in late in the game. I've been prosecuted late in the game, so I would stipulate to the case being Dismissed with Prejudice and tolled, toll the BCI expungement so the records can stay open and then I meet with P.O.S.T on Monday and I filed a complaint with the AG's office. The AG should be protecting

me. The Constitution is a shield to protect me. It sounds to me that we are all on the same team.

65. **Judge Lunnan:** I have more hearings today and everything you've told me, there is nothing I can act upon, you are preaching to the choir so to speak. I have nothing I can do, you could talk to me all day long and tell me about all these things, I have no authority - like Mr. Peterson because this case is closed - its the only case that involves you that I have any jurisdiction on and right the only jurisdiction I have, the only authority I have is to either grant or deny or stay - as you are asking me to do, your Motion for Expungement, beyond that I don't have any other authority to act on this case.
66. **Mark Allen:** Does that mean you don't have authority to dismiss it with prejudice? Its been dismissed without prejudice, but can you not dismiss it with prejudice because it was a duplicated, it was a civil rights violation, I'd like to clean that up first but I would like to stay the expungement so that the criminal investigation and the complaint that I made to the AG's office can be looked at, and then if I have to go to the federal filing I will but my goal is not to be adverse to you Craig because you have got good people working in your office, but you have been party to, you are at the back end of the train wreck of legal weaponization that I believe you understand now.
67. **Mark Allen:** So Your Honor with that I would like to have the case DISMISSED WITH PREJUDICE, THE EXPUNGEMENT CERTIFICATE TOLLED, pending a criminal investigation by P.O.S.T, and the AG's office that has been submitted through formal channels.
68. **Judge Lunnan:** Did you file a Motion to Dismiss it with Prejudice?
69. **Mark Allen:** I have Your Honor within the last two weeks.
70. **Judge Lunnan:** Alright, maybe what we need to do is to have a hearing on that, we can ....
71. **Mr. Peterson.** Your Honor I can tell you the State won't have an objection because the without prejudice was specific to the 191400132 case...
72. **Judge Lunnan:** Right

73. **Mr. Peterson:** ... and that case has been expunged, doesn't exist anymore, so any agreements therein are gone, so it, it's sixes at this point Your Honor and I have no objection to the status being Dismissed with Prejudice at this point.
74. **Judge Lunnan:** Well, based on that being on the record I will do that. I'll just sign the pleading if it's correct - the pleading that Mr. Allen has filed I will Dismiss the Case with Prejudice.
75. **Mark Allen:** Thank you and let's just keep the Certificate active for the expungement so I don't have to go through that process again pending the criminal investigation, if that's alright.
76. **Judge Lunnan:** I'll hold it (the BCI expungement certificate) until I hear back from you. In the meantime I am going to file an Order to Dismiss the case with Prejudice. Have you submitted an order with it?
77. **Mr. Allen:** I did, I submitted a proposed order ...
78. **Judge Lunnan:** I'll sign the Order.
79. **Mr. Allen:** Alright.... And Craig ... Thank you, I think honestly we are all on the same side but you came in at the 3 seconds left in the 4th quarter and Your Honor, the same for you- I totally respect your position, this case honestly the stack of evidence is 7 feet tall. And it took 4 years through GRAMA for me to find exculpatory evidence that was withheld.
80. **Mr. Allen:** Last week I found there is 11 more pieces of exculpatory evidence that was withheld so I am going to aggregate that and I will give it to a special investigator and I hope that the AG's office in collaboration with me in a different case to protect my civil rights and maybe help restore some of the black eyes that were given to some of your good prosecutors. We had 30 people fired out of Utah County and some of them are really fine people.
81. **Judge Lunnan:** So, Again, I don't want to participate in these conversations because basically you are talking about alleged evidence which I should not participate in.
82. **Mark Allen:** Understood I'll stop there. Let's close out and say I appreciate the judicial integrity and thank you Craig for your time today and I didn't put things

into the record to frustrate or cause any consternation, it's just because prior records have been sealed and as such outside eyes can't see the hell I have been put through.

83. **Judge Lunnan:** Alright, well thank you for appearing today Mr. Peterson. Thank you Mr. Allen - I'll sign that Order to Dismiss with Prejudice and this case will be closed with Prejudice.
84. **Mr. Peterson:** Thank you.
85. **Mark Allen:** Just continue to toll it until you hear back from me so that outside eyes..
86. **Judge Lunnan:** ...The expungement - yeah, I'll hang onto it until I hear back.
87. **Mark Allen: Alright** ...Thank you very much Your Honor.
88. **Judge Lunnan:** I will make sure it has been stayed.
89. **Mark Allen:** Thank you both very much I appreciate it.
90. **Judge Lunnan:** Thank you.

End

As of October 28th 2024, Judge Lunnan has not signed the Order to Dismiss, his staff indicated the following.

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Tue, Sep  
24, 2:10 PM

**Shawn Minter**

Thank you, we received the filing and passed it along to the judge. I will note that based on the hearing, we have already dismissed the case with prejudice. Based on your request to toll the expungement, we will not expunge the case until we hear otherwise from you.

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**Shawn Minter**

**Judicial Assistant**

In Court Clerk for

**Judge Robert Lunnen**