

Lisa Lewallen: It is 602, hang on, I'm pulling it up on my phone, Judge, sorry.

Lisa Lewallen: I believe it is [phone number].

Judge Hannah: 602 ...

Lisa Lewallen: It becomes public record.

Judge Hannah: 602 ... that's alright, nobody listens to this anyway. Well, actually ...

Lisa Lewallen: 602 [phone number] is what I have.

Judge Hannah: Alright. Then we will see ...

Lisa Lewallen: I'll also send him an email.

Judge Hannah: Okay.

Robberson: Yeah. Your Honor, that would be preferable. The one concern I have is if I, with all these people who's got it on this line, if I get voice messages or recorded messages or busy signs, I'm not sure I know how to get it off the line, so I guess if Lisa could check to see if he's available, then I would be happy to conference him in.

Judge Hannah: Alright, well here's what we'll do. We will call him and what's the line that people can call, Mr. Robertson?

Robberson: [phone number]

Judge Hannah: 5795, okay.

Judge Hannah: We will try to reach Mr. Kurtz and give him that number. I am also going to have my office call Aaron Nash who's an attorney at the clerk's office. He asked ... I should put on the record, I called him when I was away from the conference, I asked him if he wanted to participate in this call. He said he does, so I'm going to give him the number I just got as a call in number and ...

Robberson: No, Your Honor, I think it would be better if he's available, I can get him on the line because ...

Judge Hannah: Oh I see. Okay.

Robberson: But then if I know that Mr. Kurtz is available I can also get him on the line, but I was just saying, if he calls that number and talks to my secretary then she can give you the thumbs up that he's available so I can then put him on the line. But it's not a call in line like that.

Judge Hannah: Okay. No, I understand it's not a ... I was using that advisedly Mr. Robertson. I understand it's not a call in line. Do you want me to have him ...

Robberson: Give me his number and I'll call him.

Judge Hannah: You wanna call him? Alright.

Robberson: Yes.

Judge Hannah: Alright. Give me a minute to get him off our line. The phone number is [phone number], area code 602.

Judge Hannah: Go in my office, tell him to hang up and that he'll get a call from Luis [inaudible].

Robberson: That number is 602 [phone number]?

Judge Hannah: Correct.

Robberson: Erin Nash?

Judge Hannah: Yes. And my assistant is gonna go have him hang up, he's on hold in my office, he's gonna hang up and then you all can call him.

Robberson: Make sure [inaudible] is monitoring for that call to Kurtz.

Robberson: Alright, as soon as you tell me, I'll call him.

Judge Hannah: Okay.

Judge Hannah: I'd say, just give it about 60 seconds and then you can go ahead and call him, 'cause Gale is going back into my office right now.

Judge Hannah: Tom would you ...

Lisa Lewallen: Foster?

Robberson: Yes.

Lisa Lewallen: I just called Kurtz's cellphone, reached him and told him to call you at the number you just provided.

Judge Hannah: Make sure that Mr. Nash is waiting.

Robberson: Okay.

Lisa Lewallen: I'm sorry, Your Honor, I didn't know you were on the phone. This is Lisa Lewallen.

Judge Hannah: That's okay.

Lisa Lewallen: In any event, I reached Mr. Kurtz and he's trying to be included.

Judge Hannah: Alright, well. Okay.

Robberson: Your Honor, I will ask Mr. Kurtz to just called here, so I will put everybody in my system. I will call the number for Mr. Kurtz, get him on the line. I'll call the number for Mr. Nash, get him on the line. And then I'll get back on with everyone else.

Judge Hannah: Very good. Thank you.

Robberson: Alright.

Robberson: Lisa, just make sure again that cellphone is 602 [phone number]?

Lisa Lewallen: Right, that's what I have.

Robberson: Alright, thank you everyone.

Lisa Lewallen: Uh-huh.

Mr. Kurtz: Yeah I don't actually know what is going on, but the ... I just talked to your secretary and tried the number.

Robberson: Alright. Are we back with the Judge now?

Judge Hannah: Yeah, I recognize Mr. Kurtz's voice, is that you?

Mr. Kurtz: Yeah.

Robberson: Now let me get Mr. Nash on the phone. Hold on again please everyone.

Judge Hannah: Welcome to court, Mr. Kurtz.

Mr. Kurtz: Who's this?

Judge Hannah: It's Judge Hannah.

Mr. Kurtz: Oh, Your Honor, how are you today?

Judge Hannah: Well I'll tell you in a few minutes, probably.

Robberson: You will be joining the call with the court and counsel.

Mr. Nash: Okay. Alright.

Judge Hannah: Okay. Mr. Nash, you there?

Mr. Nash: Yes.

Judge Hannah: Very good.

Judge Hannah: Ms. Lewallen, Mr. [inaudible 00:06:11], everybody else still there?

Lisa Lewallen: Yes, Your Honor. [crosstalk 00:06:20]

Judge Hannah: Good. Okay. Don't do that to me.

Judge Hannah: Speak up immediately please.

Judge Hannah: Alright, the records should reflect that David Kurtz representing the Haegers, and Aaron Nash, who's an in house attorney for the clerk's office are now on the line with us.

Judge Hannah: Just to bring you up to date. Apparently the clerk's office released a document this morning. Docket number 460, which is, Mr. Kurtz, your letter to the National Highway Safety Administration.

Mr. Kurtz: [inaudible 00:07:19]

Judge Hannah: Based on a misinterpretation of my Order, they believed that it had been unsealed. They apparently didn't read the whole thing, or whatever happened, happened. But anyway, it was released to a reporter from a publication called Transportation and Technology and Goodyear has asked me to speak to the ... is asking me to call the reporter and explain to the reporter that the information should not have been released, it should still be sealed.

Judge Hannah: The other thing that I wanna say before we go any farther, is that I was forwarded an email from the clerk's office, from Kate Folk, who is a court operations specialist who deals with our confidential materials. And it says ... it was sent to Susan Morris, who's a supervisor out here. It says, unfortunately ... this is in response to some inquiry that I don't have, but what it says is, unfortunately the reporter Ryan Felton got a copy at 11:30am, 264 paged, \$132 from Chris De Rose.

Judge Hannah: I assume that Mr. De Rose is the clerk. That means his name was on the invoice.

Judge Hannah: So that's what I know. I need to hear from the other parties. I guess I'll start with the Center for Auto Safety and go from there.

Bennett: Hi Your Honor, this is Jennifer Bennett. I first wanted to say that we had nothing to do with this. We did not ... I don't even think I got the order before the time it says he showed up at the clerk's office.

Bennett: I did receive a request from him for comments, probably around the same time that Goodyear did, and I told him that I read the Order, sealing the documents and so I hadn't seen them.

Bennett: I also have not spoken with my client about this because of the ... I got a call from Goodyear's counsel just before we got on the phone with you, so I need to speak with my client about this before having any position or anything like that, but if there are any specific questions, sir, to answer, I'm happy to do that.

Judge Hannah: I don't if that's all the input that you have right now. That's fine. How about you Ms. Lewallen?

Lisa Lewallen: Thank you, Judge. I knew nothing about the issue at hand. Prior to Susan Freeman's call to me of, I don't know what time Susan called me, 4:30 or so. I woke up this morning and saw that I got an email notification of your Order at about 1:15 am, but I did not have the time to read it, I have a desposit motion deadline that I'm working on.

Lisa Lewallen: I did not see anything. I did not read your Order. I'm not informed about what's going on and did not able to make, set for Spartan's position, I haven't had time to obviously gather the information and formulate a position, speak to my client.

Lisa Lewallen: I am very concerned, however, at the prospect that you would contact anyone and ... because it seems to me from the little that I do glean here, that there is a, or could be, a lack of clarity or perhaps even a disagreement about the interpretation of your Order. Whether in fact all the documents are not affectively unsealed, or remain sealed. I personally and unfortunately have not read your Order to tell you what Spartan's position on that is, but I'm concerned that the concept that Goodyear, at their request, I was not aware that this was an emergency of any sort, or they're claiming it was.

Lisa Lewallen: Susan Freeman told me that something had come up and it was a very general description, and asked me if I could get on the phone. So I feel very unprepared and blind-sided, frankly, about what we're doing here. But that is my concern and with that I'll just defer to Center for Auto Safety and the plaintiffs about anything more detailed.

Judge Hannah: Mr. Kurtz.

Mr. Kurtz: Good afternoon, Your Honor. I got your Order this morning when I was dealing with other matters. And read it in its totality. I have to say, I got to the next to the last paragraph and language is a little confusing to me as to what the intent of Your Honor's expression was.

Mr. Kurtz: I was with the Center's motion and begged Your Honor's addressing the Center's concerns about the unsealing the record. I do know Mr. Felton. He did reach out

to me, I don't remember the time, and asked me about a comment. Apparently he got the documents and what I understand is, sent them to Goodyear for comment. And I said I have no comments to make whatsoever.

Mr. Kurtz: I had told him I thought that I thought that where we last left off, these records were sealed, but I do understand that the clerk provided them to him, so that's kind of all the value I think I can add to Your Honor's consideration of the issues.

Judge Hannah: Alright. The ... Mr. Nash is there anything you wanna add since I've kind of put you on the spot here. Is there anything you wanna add before I go back to hear from the other parties.

Mr. Nash: Just, if it isn't clear up to this point in terms of the clerk's actions. When the Order came through our folks in the ... we call discovery and confidential, the people who do the sealing and unsealing, started doing the unsealing, got input that the Order was to keep things sealed and so went back to sealing everything after that.

Mr. Nash: Just timeline wise, that's at least how this happened.

Judge Hannah: Okay.

Judge Hannah: Mr. Robberson, let me ask you a couple of legal questions here. The ... my understanding ... and maybe Mr. Kurtz can help us with this. The number 460 is Mr. Kurtz's letter to NHTSA, or at least some substantial portion of it, I don't think that it's the whole thing. But it's the letter and some number of the exhibits.

Judge Hannah: My understanding from the filing a couple weeks ago is that NHTSA denied Goodyear's request to keep that confidential. Does that mean that that would be available from them?

Robberson: Your Honor, Susan Freeman is more aware of that and I'll have her address that, she's right here.

Susan Freeman: Your Honor, Good Year did file a motion to reconsider that, if it's my understanding from the counsel who handled that and also ...

Lisa Lewallen: I'm sorry, I can't hear you.

Judge Hannah: No, I can't hear you either.

Susan Freeman: [inaudible 00:16:04] There was a motion ...

Lisa Lewallen: Start over please.

Susan Freeman: Yes. There was a timely motion for reconsideration that was filed. If you look at the last paragraph of exhibit N of Mr. Kurtz's notice of the confidentiality

decision, it points out that a motion for reconsideration can be filed by a deadline.

Susan Freeman: That was filed. I have checked with counsel who handles that NHTSA work and have been informed that pursuant to 49CFR512.1A and B, that everything remained sealed until an Order is ... until a decision is made on the reconsideration motion.

Susan Freeman: So nothing has been released by NHTSA at this time.

Judge Hannah: Alright.

Judge Hannah: Mr. Robertson I have two legal things I wanna ask you about. One is, whether this is a First Amendment issue? Whether I have any business in effect enjoining the publication of this information?

Judge Hannah: And I'm looking at State Ex Rel Thomas versus Grant, which seems to say that if this publication is not a party to the protective order then they're not bound by it.

Judge Hannah: The second thing, and I suppose this is perhaps related, maybe not, is the, I too am concerned about the idea that I would call somebody and essentially give them the court's position, I guess, on what to do with this information. It seems to me that what I do is make decisions and enter Orders, but that's not exactly what you're asking me to do. And so if I can just speak to that as well.

Robberson: Well, Your Honor, can you hear me?

Judge Hannah: Yes, I can hear you.

Robberson: What we're asking the court to do is to simply convey information to this reporter and the reason that we're asking the court to convey the information is because first of all, it's the court's system, we're certainly not saying Your Honor or Your Honor's staff, but it's the system, which you are part of, which made the mistake.

Robberson: And Goodyear is facing imminent prejudice because of that mistake. Now do I understand courts don't typically do things like this? Well, courts don't typically have phone calls with, I don't know how many lawyers are on the line right now, 5:30 after hours, but this is an emergency.

Robberson: This is on the Order, Your Honor, of something the courts do do with some regularity, which is, for example, to admonish, we'd like to have witness. I've had courts where someone, where a witness non-party, just like this reporter is a non-party, has refused to cooperate in a deposition, refused to abide by subpoena to trial and the court has had the individual brought before the court. Sometimes telephonically, sometimes in person. And admonish that person that's said, you need to understand Mr. Witness, here's what's going on.

Robberson: So that is a perfect example, I think, of a court in parting information to a non-party so that the party understands what the factors are. Goodyear could call this reporter, and Goodyear could give him our point of view, but certainly we think that it behooves the court to be involved for the reason that I've said.

Robberson: Secondly, I don't believe there is a First Amendment issue when the court is simply providing information to this reporter and asking the reporter to do the right thing. As I mentioned, I've seen that done before. I don't know that I actually remember that the court was involved in communicating to the channel, I think it was channel three reporter that I was involved with. But information was conveyed to the channel three reporter and they were asked to do the right thing, which is not to essentially disregard a court order, the rights of the parties and just take it upon themselves to, in essence, be Judge, Jury and Executioner themselves and make all the decisions.

Robberson: Now I don't ... saying that the steps we're asking the court to take right now does not involve First Amendment issues, doesn't mean that we won't be asking the court to do something else in the future. Perhaps even tomorrow. But, we need to do our best to maintain the status quo or all of this becomes for naught.

Robberson: So I don't think this is a First Amendment issue. I don't think we are asking you at this stage to do an injunction. Frankly, I wouldn't expect you to do an injunction without some legal support, but we are asking you to do something, which courts do do on occasion, and I've given you an example of that, which is to basically admonish or instruct someone involved in the process about what's going on and I've even had courts ask people to cooperate before. I don't think asking this reporter to cooperate is the same thing as entering an injunction.

Judge Hannah: Well that brings me to the other question, which is, is ... I'm looking at this case and for the record it's Sate Ex Rel Thomas versus Grant, 213P second 346. And it's the ... this was the case where there was a deposition that was sealed that the prosecutor's wanted a copy. I think the court gave them permission, no the court didn't give them permission, but the Sheriff's office picked it up, picked up a copy of the transcript where they entered a search warrant and then the Sheriff's office released it to a reporter pursuant to a public record's request.

Judge Hannah: And the holding of the case is that because the state was not bound by the protective order and acquired the deposition by means other than through the underlying litigation, the protective order did not bar the state from disclosing the deposition and that that resulted in the court of appeals vacating Judge Grant's Order.

Judge Hannah: The court held the state had violated the Order. Ordered all copies of the deposition returned and directed that the deposition shall not be used by anyone for any purpose, granted it sure needs to be used as a sanction.

Judge Hannah: I'm having a hard time distinguishing that from this case because I'm not seeing how the reporter is bound by the underlying, what's at the root of this, which is the protective order.

Robberson: Well, Your Honor, I guess I would view it somewhat differently. At the root of this was an error by the court system. That's why this fellow has the information. He didn't get this from some disgruntled employee somewhere who slipped him some documents or from Deep Throat kind of source. We know how he got it. And he got it through, and with all due respect, your system. And your system made a mistake. And rights are gonna be lost if your system doesn't do something to rectify the mistake.

Robberson: It's not a question of whether this is subject to the protective order, it's a question of whether he should ever have gotten this and everyone on this line knows the answer to that question. He shouldn't have. And if proper procedures would have been followed, he wouldn't have it. If he were to have come to you, or your staff, and asked for a copy, he wouldn't have it. If he would have gone to Mr. Nash and asked him, or any of the lawyers, I'm sure they would've obeyed the courts order and he wouldn't have it.

Robberson: This is not a question of someone who legitimately got something and now we're trying to claw it back. He should not have this. My client should not lose its ability to continue to participate in the judicial system and to try to vindicate it's rights through the judicial system because some clerk over the counter didn't read an Order the right way and handed a document to someone that they shouldn't have.

Robberson: And all we're asking the court to do, is to give those facts to this reporter. We're not asking you to issue a body attachment and bring the fellow into custody so that he can't do anything until this is straightened out. We're simply asking you to tell him the facts that everyone on this call knows are the facts, that you, Your Honor, know are the facts and ask him not to preempt the judicial system.

Robberson: My client's rights should not be lost because a clerk didn't read an Order the right way.

Judge Hannah: Alright. [crosstalk 00:28:40]

Mr. Kurtz: David Kurtz. I do have information that may be of benefit regarding this.

Judge Hannah: Go ahead.

Mr. Kurtz: Ms. Freeman had told everyone that they had ... that Goodyear had filed a timely motion for reconsideration on NHTSA's determination that the letter at issue and all of its enclosures were not entitled to confidential treatment.

Mr. Kurtz: At 3:25 this afternoon I'd gotten an email from Otto Maethke, he's the senior defect guy, lawyer, at NHTSA's handling all this stuff. I had sent him over the court's determination this morning and he says, Goodyear had a request for reconsideration of the denial of their request for confidential treatment hand delivered yesterday. I was out and hadn't seen it yet. They have also retained Washington, D.C. counsel who had informed me that they did not get the denial until March 6 and contend that the request was timely.

Mr. Kurtz: Meaning that the NHTSA has an issue whether they timely filed any motion for reconsideration in spite of how this treatment has characterized it. I don't know what NHTSA's final decision is. It obviously hasn't been made, but I bring that to the court's attention because if the reconsideration issue is untimely then this is all for naught. All that is denied by NHTSA.

Mr. Kurtz: I guess Goodyear would have theoretically the right to try to get an injunction in Washington, D.C. from NHTSA to terminate them, but outside of my skill set.

Robberson: That's neither here nor there. This reporter did not get these documents from NHTSA. No one is saying that these are available today from NHTSA. NHTSA has a process, Goodyear is engaged in that process and will win or lose. That's our system. And Goodyear is engaged in a process before this court and will win or lose.

Robberson: But we shouldn't lose the right to participate in the judicial system or the administrative system with NHTSA because of an acknowledged error. And all we're trying to do this afternoon is to maintain the status quo so that we don't lose those rights through what no one ... it was a wholly illegitimate route for this individual to get these documents and no one is saying otherwise.

Judge Hannah: Well ...

Robberson: And if our system is not able to even convey to an individual information about the consequences of what he may do when he obtains documents through such an improper route, then I guess the system is pretty sorely lacking.

Judge Hannah: Well, alright, Mr. Robberson.

Judge Hannah: Seems to me that if your view is that there are gonna be consequences for this reporter, if he publishes this information, that's your job to convey that to him, not mine.

Judge Hannah: The motion ... the request ... Goodyear's request is denied. There are two reasons.

Judge Hannah: First, it is not an appropriate role for this court to appoint itself as the spokesperson or conveyor of information for the court system concerning this

person's proper response or what the person should do as a result of an Order that this court has issued.

Judge Hannah: The court has not been asked to issue a formal Order and it's the request is that the court call the individual and advise him of what the Order says. And that would not be a proper course of action for the court in any event. I would also note that I do not represent the court or the court system. If somebody in the court system made a mistake, that's regrettable. If that affects rights, then I suppose somebody might have to decide at some point how to address that, but it will not ... it is not appropriate to attempt to redress it to attempt to stop it by the court making a phone call.

Judge Hannah: Secondly, based on the case that the court discussed on the record, State Ex Rel Thomas versus Grant, it is my legal holding and my ruling that the reporter is not bound by the protective order that underlays the sealing order.

Judge Hannah: Just to review a little bit, the Order that I issued yesterday, the documents were sealed at the parties ... the filings in this case were under seal at the request of the parties because of the blanket protective order that was entered early in the case. There was not another reason that those documents were sealed, so this is a situation where the issue is, in my view, whether a third party is bound by this Order. And I don't think they are. And I guess I should also say, that I don't have any information that this person did anything wrong.

Judge Hannah: There's no information before me that he was untruthful with anybody, that he stole the information, anything of that nature. So those are the reasons for the court's decision, I suspect that it will be ... well, I don't know. If I had to guess, I would guess that it's gonna be moving in short order anyway, but maybe not. Maybe Good Year will prevail on the motion for reconsideration. That's not, however, a basis for this decision if the information is still under seal at NHTSA, then that is what it is and that's not my place to second guess that.

Judge Hannah: Those are the reasons for the court's decision.

Judge Hannah: Is there anything else that anybody needs to be heard on before we close this here?

Lisa Lewallen: Your Honor, this is Lisa Lewallen for Spartan Motors again. I would just like to round out the record Mr. Robertson made several statements that everyone on this phone call is in agreement about what happened, or his characterization of what happened. That is absolutely not true.

Lisa Lewallen: As I said when I got on the call, I have not read your Order. I do not know what the discrepancy is or the argument is that Good Year is putting forward about your Order. Spartan has no knowledge about the facts regarding Mr. Felton. Certainly I was not contacted by Mr. Felton. To my knowledge, my client was not contacted by him and so there is no universal factual agreement. So I just

wanted that to be clear on the record in case this record becomes part of some other record. Thank you.

Mr. Kurtz: David Kurtz, Your Honor. I've not further comments on behalf of the Haggars.

Judge Hannah: Alright.

Robberson: Your Honor, this is Foster Robberson, with respect to what Ms. Lewallen said, having no information that doesn't change the facts from what everyone else has, so, okay, she doesn't know and Spartan doesn't know. But no one has brought any facts to the court that are contrary to anything that we've represented, but I do want to thank the court for the time and counsel for participating and we will proceed and I'm sure everyone will be hearing more later.

Judge Hannah: Well, alright. Then thank you all, we're at recess.

Mr. Kurtz: Thank you, Your Honor.

Lisa Lewallen: Your Honor.