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WILSON T. WELLS  
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1 PICCARRETA DAVIS PC  
2 145 South Sixth Avenue  
3 Tucson, AZ 85701-2007  
4 (520) 622-6900  
5 Michael L. Piccarreta  
6 Pima County Computer No. 45199  
7 Attorney for Defendant

-and-

8 WRIGHT STANISH & WINCKLER  
9 300 S. Fourth Street, Suite 701  
10 Las Vegas, NV 89101  
11 (702) 382-2004  
12 Attorney for Defendant

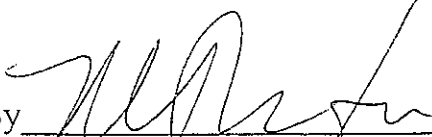
13 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
14 IN AND FOR THE COUNTY OF MOHAVE

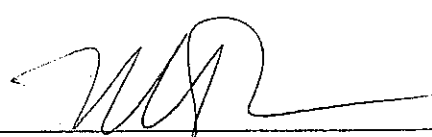
15	STATE OF ARIZONA,	)	NO. CR-2007-953
16		)	
17	Plaintiff,	)	DEFENDANT JEFFS' MOTION
18		)	TO DISMISS COUNTS 2 & 4
19	vs	)	
20		)	
21	WARREN STEED JEFFS,	)	[Oral Argument Requested]
22		)	
23	Defendant.	)	[Hon. Steven F. Conn]
24		)	

25 The defendant, Warren Jeffs, by and through his undersigned attorney,  
26 hereby respectfully requests this Court, pursuant to Rule 16 6(b) of the Arizona  
27 Rules of Criminal Procedure, to issue its order dismissing counts 2 and 4 of his  
28 indictment. These counts are legally insufficient as a matter of law for the reasons  
set forth in the attached Memorandum of Points and Authorities.

1 RESPECTFULLY SUBMITTED this 26th day of March, 2008.

2 WRIGHT STANISH & WINCKLER PICCARRETA DAVIS PC

3  
4 By   
5 Richard A. Wright  
6 Attorney for Warren Jeffs

7  
8 By   
9 Michael L. Piccarreta  
10 Jefferson Keenan  
11 Attorneys for Warren Jeffs

12 MEMORANDUM OF POINTS AND AUTHORITIES

13 I. STATEMENT OF FACTS

14 The defendant, Warren Jeffs, stands charged as an accomplice to the crimes  
15 of sexual conduct with a minor and incest. Counts 1 arises from an incident that,  
16 according to the indictment, occurred on or about the 31st day of August, 2003,  
17 wherein Leonard Barlow had sexual conduct with \_\_\_\_\_ who was under  
18 18 years of age. Count 2 arises from the same incident and alleges that the sexual  
19 conduct constituted incest. Count 3 of the indictment refers to an incident that  
20 allegedly occurred in September of 2003 between Leonard Barlow and

21 Count 4 arises from this same incident and also alleges that the sexual  
22 conduct constituted incest. Mr. Jeffs is not charged with personally engaging in  
23 any type of sexual conduct with anyone, rather he is charged as an accomplice to  
24 the allegedly illegal sexual activity between these other individuals.

25 The incest charges in counts 2 and 4 therefore constitute a second set of  
26 charges for the same activity addressed in counts 1 and 3. The incest charges must  
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28

1 be dismissed because Arizona law clearly requires that both participants be "18 or  
2 more years of age." In addition, because Leonard Barlow and \_\_\_\_\_ are  
3 first cousins of the half blood, they are not within the degrees of consanguinity  
4 that are defined as incestuous under Arizona law. Accordingly, counts 2 and 4 of  
5 the indictment must be dismissed, leaving Mr Jeffs to stand trial as an accomplice  
6 to the charges of sexual conduct with a minor set forth in counts 1 and 3  
7

8  
9 II. DISCUSSION

10 A. Arizona's Incest Statute, A.R.S. § 13-3608, Clearly Requires That  
11 Both Participants Be 18 Or More Years Of Age.

12 Rule 16 6(b) of the Arizona Rules of Criminal Procedure provides that:

13  
14 The court, on motion of the defendant, shall order that a prosecution  
15 be dismissed upon finding that the indictment, information, or  
16 complaint is insufficient as a matter of law.

17 Count 2 of the indictment alleges that:

18 On or about the 31st day of August, 2003, in the vicinity of 40 West  
19 Johnson Avenue, Colorado City, Mohave County, Arizona, said  
20 Defendant, WARREN STEED JEFFS, committed the crime of incest  
21 as an accomplice, 13-3608, 13-303, 13-701 and 13-801, Class 4  
22 Felony.

23 Count 4 of the indictment is worded identically, except that the date of the offense  
24 is listed as "[o]n or between September 1, 2003 and September 30, 2003" The  
25 crime of incest is set forth in A.R.S § 13-3608 which states:

26 Persons who are 18 or more years of age and are within the degrees  
27 of consanguinity within which marriages are declared by law to be  
28 incestuous and void, who knowingly intermarry with each other, or

1 who knowingly commit fornication or adultery with each other are  
2 guilty of a class 4 felony

3 [Emphasis added].

4 By its own terms, the statute only applies to “persons who are 18 years or  
5 more of age. . . who knowingly commit fornication. . . with each other. . .” The  
6 indictment, therefore, fails to allege an essential element of the offense, i.e. that  
7 both persons are 18 or more years of age. The statute appears to have had its  
8 origin in the Arizona Penal Code of 1901 and originally had no age  
9 requirement. According to the Historical and Statutory Notes, “[t]he 1985  
10 amendment made the section applicable to persons who are 15 or more years of  
11 age” Laws 1985, Ch. 364, § 29, effective May 16, 1985. In 1998, the age was  
12 changed from 15 to 18 or more years of age. Laws 1998, Ch. 291, § 1.

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15  
16 The Revised Arizona Jury Instruction for this offense has not been  
17 updated to reflect the 1998 amendment. It refers to the 1985 version of the  
18 statute and states:

19  
20 **Incest.**

21  
22 The crime of incest requires proof of the following two things:

23 1. The defendant knowingly [married][committed sexual  
24 intercourse with][committed adultery with] another; *and*

25 2. The defendant and such other person were 15 or more  
26 years of age and were [parent and child][grandparent and  
27 grandchild, regardless of the degree][brother and sister, including  
28 half-brother or half-sister][uncle and niece][aunt and nephew][first

1           cousins] at the time.

2 Revised Arizona Jury Instructions, Criminal 36 08.

3  
4           Under this jury instruction, it is clear that both the defendant and the  
5 other person must be 15 or more years of age. Accordingly, with the 1998  
6 revision to the statute, it follows that both the defendant and other person must  
7 be 18 or more years of age.<sup>1</sup>                            is referred to in the indictment as  
8 “under 18 years of age.” Accordingly, the charges of incest as alleged in counts  
9 2 and 4 of the indictment are “insufficient as a matter of law,” and must be  
10 dismissed pursuant to Rule 16.6(b) of the Arizona Rules of Criminal Procedure.  
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12  
13           B.   Leonard Barlow and (\_\_\_\_\_ Are Not Within The  
14           Degrees Of Consanguinity Within Which Marriages Are  
15           Declared By Law To Be Incestuous And Their Conduct  
16           Cannot Therefore Be The Basis For A Charge Of Incest.

17           As noted above, Arizona’s incest statute applies to individuals 18 or more  
18 years of age who are “within the degrees of consanguinity within which  
19 marriages are declared by law to be incestuous and void ...” A.R.S. § 13-3608.

20           The marriages that are declared incestuous and void under Arizona law are set  
21 forth in A.R.S. § 25-101 which provides, in pertinent part:  
22

23  
24           \_\_\_\_\_  
25           <sup>1</sup> Arizona case law shows that cases of incest involving minors are prosecuted under the  
26 Arizona statutes that prohibit certain types of sexual activity with minors. *See, e.g., State v*  
27 *Arnoldi*, 176 Ariz. 236, 860 P.2d 503 (App 1993) [charges involved defendant’s four minor  
28 daughters]. As noted above, Mr. Jeffs also stands charged as an accomplice to two counts of  
sexual conduct with a minor based on the same incidents that form the basis for the incest  
counts.

1 Marriage between parents and children, including grandparents and  
2 grandchildren of every degree, between brothers and sisters of the  
3 one-half as well as the whole blood, and between uncles and  
4 nieces, aunts and nephews and between first cousins, is prohibited  
and void.

5 A.R.S. § 25-101(A). Significantly, while statute specifically prohibits  
6 marriages between brothers and sisters “of the one-half as well as the whole  
7 blood,” it makes no such reference to first cousins of the half blood. Clearly,  
8 the Arizona legislature knows how to refer to relationships of the half blood  
9 when it so chooses. The fact that it has done so with respect to brothers and  
10 sisters but not first cousins indicates that there is no prohibition against  
11 marriages between first cousins of the half blood. Under the doctrine of  
12 *expressio unius est exclusio alterius*, it is plain that the Arizona legislature did  
13 not intend A.R.S. § 25-101(A) to apply to first cousins of the half-blood. See  
14 *State v Roscoe*, 185 Ariz 68, 71-72, 912 P 2d 1297, 1300-01 (1996).  
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18 Leonard Barlow and \_\_\_\_\_ ) share a common grandfather, John Y.  
19 Barlow, but they do not share a common grandmother.<sup>2</sup> They are therefore not  
20 first cousins, but rather first cousins of the one-half blood. Accordingly, the  
21 relationship between Leonard Barlow and \_\_\_\_\_ ) is not defined as  
22 incestuous under Arizona’s marriage statutes and A.R.S. § 13-3608 cannot be  
23 applied to them. Counts 2 and 4 of the indictment are therefore also insufficient  
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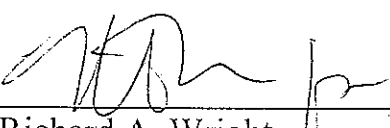
1 as a matter of law on this ground and the counts must be dismissed pursuant to  
2 Rule 16.6(b) of the Arizona Rules of Criminal Procedure.

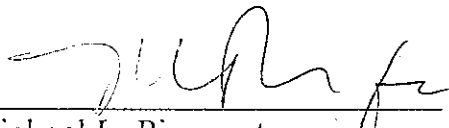
3  
4 III. CONCLUSION

5 For the foregoing reasons, the defendant, Warren Jeffs, by and through  
6 his undersigned attorney, hereby respectfully requests this Court to issue its  
7 order dismissing counts 2 and 4 of his indictment.  
8

9 RESPECTFULLY SUBMITTED this 26th day of March, 2008.

10 WRIGHT STANISH & WINCKLER PICCARRETA DAVIS PC

11  
12 By   
13 Richard A. Wright  
14 Attorney for Warren Jeffs

15  
16 By   
17 Michael L. Piccarreta  
18 Jefferson Keenan  
19 Attorneys for Warren Jeffs

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27 <sup>2</sup> \_\_\_\_\_ grandmother is Esther Johnson and Leonard Barlow's grandmother is  
28 Martha Jessop

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Copy of the foregoing mailed  
this 26th day of March, 2008, to:

Clerk of Mohave County Superior Court  
401 East Spring Street  
Kingman, AZ 86401

Copy of the foregoing faxed and mailed  
this 26th day of March, 2008, to:

Hon. Steven F. Conn  
Mohave County Superior Court  
401 East Spring Street  
Kingman, AZ 86401  
Fax: 928-753-8938

Copy of the foregoing mailed  
this 26th day of March, 2008, to:

Matthew J. Smith, Esq.  
Mohave County Attorney's Office  
315 North Fourth Street  
P.O. Box 7000  
Kingman, AZ 86402-7000

Timothy J. Linnins, Esq.  
Office of the Attorney General  
1275 W Washington  
Phoenix, AZ 85007