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VIRLYNN TINNEILL  
SUPERIOR COURT CLERK

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**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**

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**IN AND FOR THE COUNTY OF MOHAVE**

8

STATE OF ARIZONA,

No. CR-2007-953

9

Plaintiff,

RESPONSE TO DEFENDANT  
JEFFS' MOTION FOR REMAND

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vs

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**WARREN STEED JEFFS**

Defendant.

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COMES NOW, the State of Arizona, by the Mohave County Attorney, and hereby

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moves the Court to deny Defendant's Motion to Remand this case to the Grand Jury.

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This response is based on the legal reasoning and authorities set forth in the attached

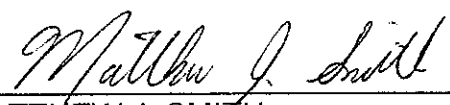
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Memorandum of Points and Authorities.

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RESPECTFULLY SUBMITTED THIS 6th day June, 2008.

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MATTHEW J. SMITH  
MOHAVE COUNTY ATTORNEY

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MEMORANDUM OF POINTS AND AUTHORITIES

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Defendant's first contention is that the prosecutor failed to make proper inquiry

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into the type of publicity the grand jurors had been exposed to concerning the defendant

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and whether they could be truly unbiased grand jurors. Under Rule 12.9 of the Arizona

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Rules of Criminal Procedure, a defendant has the substantial due process right to a fair,

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impartial, and unbiased grand jury *Crimmins vs. Superior Court*, 139 Ariz 39, 668 P2d.,

1 882 (1983). Of course the standard of proof at grand jury proceedings is probable  
2 cause, "not beyond a reasonable doubt". The State would also note that at the time of  
3 the grand jury proceedings in the present case, which proceedings were held on June  
4 21, 2007, Warren Jeffs had not had his trial yet in the State of Utah which generated a  
5 tremendous amount of publicity.

6 During the grand jury proceedings on page 11, the prosecutor asked the grand  
7 jurors, "specifically without stating anything that you may have heard or have read, has  
8 anybody in here read anything or heard anything about the case involving Colorado City  
9 and a man named Warren Jeffs? Please raise your hand " After this question was  
10 asked 11 people raised their hands (page 11, line 17 and 18 of Grand Jury Transcript)  
11 At that time the prosecutor asked the grand jurors if anybody had not heard anything  
12 about Warren Jeffs or the case involving Colorado City. Grand Juror 4 responded,  
13 "that he had not heard anything about the case". The prosecutor then told the grand  
14 jurors to not state anything in front of the other grand jurors including during  
15 deliberations anything they may know about the case or may have read; this was done  
16 in order to avoid tainting the grand jury panel. The prosecutor further instructed the  
17 grand jurors to consider and deliberate on this case based only on what would be  
18 presented during the grand jury proceedings. He asked the grand jurors if anybody had  
19 a problem with that, and none of the grand jurors indicated they had a problem

20 The prosecutor then asked on page 12 of the Transcript "Does anybody feel  
21 because of some of the things that they have either heard about from either television or  
22 radio or media coverage that they cannot be fair and impartial with respect to an  
23 investigation involving Warren Jeffs? If you do not believe you can be fair and impartial,  
24 please raise your hand." None of the grand jurors raised their hands. The prosecutor  
25

1 then again instructed the grand jurors to just deliberate based on the evidence  
2 presented by the witness Gary Engels

3 Although the defense argues in its motion that it was no surprise that none of the  
4 grand jurors raised their hands, the State would point out that in the companion case  
5 involving victim ██████ that two of the grand jurors did raise their hand to a similar  
6 inquiry and were dismissed from the proceedings. The bottom line is that inquiry was  
7 made of the grand jurors as to whether or not they knew or had heard or read anything  
8 about the case, and then they were asked whether they could be fair and impartial.  
9 They answered in the affirmative and there is no reason to question that decision. The  
10 prosecutor on multiple occasions instructed them to ignore anything they may have read  
11 or heard and to decide the case based only on the evidence presented during the grand  
12 jury proceedings. All of the grand jurors agreed to do that in this case

13 The defendant next argues that the defendant's substantial due process rights  
14 were denied due to the prosecutor's failure to instruct the grand jury as to the definition  
15 of "accomplice" as found in A.R.S. §13-301. As was discussed in the companion  
16 proceeding the prosecution did instruct the grand jurors on A.R.S. §13-303, which is the  
17 applicable statute on criminal liability based upon conduct of another. Additionally, the  
18 prosecutor on page 10 of the Grand Jury Transcript read A.R.S. §13-303(B) to the  
19 grand jurors which further explained the statute and defined "accomplice". In fact, the  
20 language of A.R.S. §13-303(B) is in most respects identical with the definition of  
21 accomplice as found in A.R.S. §13-301. (see page 10, line 18 thru page 11, line 3). The  
22 grand jury was adequately instructed on the law including the law concerning  
23 accomplice liability

24 The defense next argues that the State presented false and misleading evidence  
25 and failed to present clearly exculpatory evidence during the grand jury proceedings

1 The first specific argument advanced is that the State presented false testimony that  
2 \_\_\_\_\_ and Leonard Barlow were first cousins. In fact, \_\_\_\_\_ and Leonard  
3 Barlow are first cousins and Detective Engels' testimony was not false. However, as  
4 the Court ruled in its minute order dated June 4, 2008, in a very close call it was held  
5 that the rule of lenity applied to this case and that the incest statute does not apply to  
6 the relation of cousins of the half-blood. Due to the Court's decision this issue is now  
7 moot as the incest counts have been dismissed by this Court.

8 The next specific argument made by the defense is that the State failed to  
9 present clearly exculpatory evidence that \_\_\_\_\_ made patently unbelievable  
10 statements in connection with the charges in this matter. In point of fact, \_\_\_\_\_  
11 has not made inconsistent statements in this case which would lead to her  
12 impeachment. However, the defense seems to feel that the State should have  
13 presented evidence about \_\_\_\_\_ statements about what happened after  
14 Warren Jeffs tried to have her and Leonard Barlow have sex at Mr. Jeffs' home.  
15 Apparently the defense believes that her claims are unbelievable. This is not the type of  
16 evidence that is clearly exculpatory. It does not make it any more or any less likely that  
17 Warren Jeffs arranged the so-called "marriage" between Leonard Barlow and  
18 \_\_\_\_\_, nor does it explain the fact that Warren Jeffs encouraged the couple to have  
19 children on multiple occasions, which the defense is apparently not disputing.

20 In point of fact the defense's allegations contained on page 16 and 17 containing  
21 \_\_\_\_\_ statements are wrong. The State has evidence that the window in  
22 question that was outside of Warren Jeffs' office was in fact not 15 to 20 feet above the  
23 surface below, but was much closer at the relevant time frame. The defense should  
24 also be aware from a review of the discovery that there is evidence substantiating  
25 \_\_\_\_\_ claim that she hid out in the woods for three days, including evidence of empty

1 food cans that had been found. There was no reason to present this additional  
2 evidence to the grand jury, but if the State would have presented it, it would not have  
3 helped the defendant in any way

4 The defense next argues that the prosecutor improperly influenced the grand jury  
5 through repeated prejudicial references to religious practices and beliefs of the FLDS  
6 Church. The defense's vague arguments miss the point of the presentation of evidence  
7 to the grand jury. The evidence concerning FLDS customs, beliefs and practices was  
8 introduced to show the control that Warren Jeffs had over the victim and over Leonard  
9 Barlow. This evidence was crucial to show that Warren Jeffs acted as an accomplice by  
10 performing the sealing ceremony between the couple that he himself arranged. It was  
11 also essential to show why a 51-year old man would marry his 16-year old first cousin.  
12 None of the evidence presented that the defense argues was religiously based was  
13 misleading or false.

14 For all these reasons the State requests the Court deny Defendant's Motion to  
15 Remand this case to the grand jury

16 RESPECTFULLY SUBMITTED this 6<sup>th</sup> day of June, 2008.

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MATTHEW J. SMITH  
MOHAVE COUNTY ATTORNEY

20 A copy of the foregoing  
21 sent this same day to:

22 HONORABLE STEVEN F. CONN  
SUPERIOR COURT JUDGE

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By *Ben Brooks*