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*30 Oct 07*  


IN THE FIFTH DISTRICT COURT  
WASHINGTON COUNTY, STATE OF UTAH

STATE OF UTAH,

Plaintiff,

vs.

WARREN STEED JEFFS,

Defendant.

**AMENDED ORDER ALLOWING  
CONFIDENTIAL AND PRIVILEGED  
PHYSICIAN  
CONTACT WITH PATIENT  
[Filed Under Seal]**

**Case No. 061500526**

**Judge James L. Shumate**

On February 8, 2007, the Defendant's Motion for Confidential and Privileged Physician Contact With Patient came before this Court for oral argument. The State was represented by its counsel, Mr. Belnap and Ms. Mitchell. Additionally, various members from the Purgatory Correctional Facility, including Chief Mary Reap, were present in the Judge's chambers.

Mr. Jeffs' counsel, Walter F. Bugden, Jr., and Richard A. Wright, participated by telephone conference. They waive any right Defendant may have to be present during discussion of these issues.

Both the Defendant and the State submitted memoranda of law in support of their respective positions. Both parties presented oral argument on their respective positions.

Being fully advised in the premises, and having considered what will best further the ends of justice under the circumstances, the Court now enters the following Order:

1. Dr. Lloyd Barlow, Dr. Thomas E. Bittker, and Dr. Claude Warner, will be given unfettered, unsupervised, unmonitored and non-eavesdropped physical contact with Mr. Jeffs at the Purgatory Correctional Facility. No jail staff will be present when either Dr. Barlow, Dr. Bittker, or Dr. Warner meets with their patient, Warren Jeffs.

2. The physical contact and conversations with Mr. Jeffs will be limited to two visits for each of the three physicians. The physicians may elect to meet with Mr. Jeffs together, or they meet with Mr. Jeffs separately.

3. Each physicians consultation with Mr. Jeffs shall be limited to one hour and each physician may have no more than two hours with the patient.

4. The Purgatory Correctional Facility may screen Dr. Barlow, Dr. Bittker, and Dr. Warner, for security purposes.

5. Each physician shall be granted access to the patient at the physician's request, and with Mr. Jeffs' consent, but at a time that is not disruptive or inconvenient for the Purgatory Correctional Facility.

6. With Mr. Jeffs' consent, each physician shall be entitled to consult with Dr. LaRowe and Dr. Stephen Seager, and each physician shall have access to all of the patient's medical records and nursing notes maintained by the Purgatory Correctional

Facility. The consultation between physicians Barlow, Bittker, and Warner, shall only be limited by their medical ethics.

7. The State's motion to stay this Order pending any appeal, is hereby denied.

8. This Order is entered under seal and all parties are instructed to take extraordinary measures to maintain the confidentiality and privacy of this Court's Order.

DATED this 12 day of February, 2007.

BY THE COURT:

  
\_\_\_\_\_  
HON. JAMES L. SHOMATE

Approved as to form:

  
\_\_\_\_\_  
Brock Belnap  
Washington County Attorney

**CLERK'S CERTIFICATE OF SERVICE**

I hereby certify that, on the \_\_\_ day of February, 2007, I caused to be served a true and correct copy of the foregoing by the method indicated below, and addressed to the following:

Brock R. Belnap  
Washington County Attorney  
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\_\_\_ OVERNIGHT MAIL  
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OCT 30 PM 3:45

WALTER F. BUGDEN, JR.

April 9, 2007

FILED UNDER SEAL

VIA FACSIMILE  
& FIRST CLASS MAIL

Honorable James L. Shumate  
Fifth Judicial District Court  
220 North 200 East  
St. George, UT 84770

Fax Rec'd 9 Apr 07  
Ordered Filed  
30 Oct 07

Re: Deseret News Article

Dear Judge Shumate:

Enclosed please find a copy of the April 5<sup>th</sup> *Deseret Morning News* article which contains the heading "I am not the Prophet," Says Note by Jeffs." The article contains an enhancement of a photograph of a note which Mr. Jeffs had written in his own handwriting and was showing us at the end of the motion hearings on March 27<sup>th</sup>. Please note that we are huddled around the note reading it for the first time. As the article explains, the *Deseret News* hired a digital enhancement expert and a forensic handwriting analyst to mirror the printing on the note. The article also indicates that the contents of the note "were also corroborated by law enforcement sources who spoke to the *Deseret Morning News* on the condition of anonymity."

I write to advise the Court that we are outraged, shocked, and dismayed that the *Deseret Morning News* published this *private* note. This was **not** a public document. Although we were reviewing the document in open court, we did not carelessly or recklessly display the note to the media. Although we were well aware that a pooled photographer was in the courtroom, we did not turn the note toward the photographer to permit him to photograph it. On the contrary, we huddled together and reviewed the note under circumstances that were obviously intended to be confidential and private. The *Deseret News* devised a means through digital technology and handwriting analysis to violate the sanctity and privacy of attorney/client communications.

The *Deseret News* was in contact with Ms. Isaacson on the evening before the story appeared in the *Deseret News*. During that conversation, Ms. Isaacson made it abundantly clear that the defense team believed that the note was a privileged communication between Mr. Jeffs and his counsel. She explained to the *Deseret News* staff—Cannon and Winslow—that it was never the intention of the attorneys to waive the attorney/client privilege, to abandon the privacy of the communication, or to forfeit the confidentiality of the communication. The *Deseret News* published the confidential

## BUGDEN &amp; ISAACSON

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communication anyway. They did so intentionally and in doing so, the *Deseret News* has contributed to the difficulty in finding a fair and impartial jury.

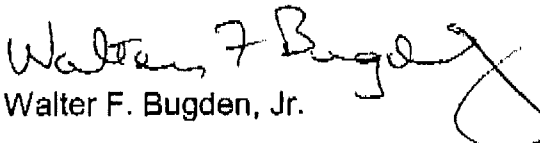
The media, through the use of a telephoto lens and digital technology, invaded the defense camp. What the media did is no different than pointing a sensitive microphone in the direction of defense counsel and eavesdropping on confidential communications between the client and his attorneys.

We also firmly believe it strains credulity to suggest that the media could have possibly believed that they were entitled to use the pooled photographer to invade the private communications and writing of the Defendant with his counsel. The *Deseret News*' unbridled desecration of confidential communications between Mr. Jeffs and his counsel cannot be countenanced. Accordingly, we request that the Court amend the decorum order and rescind the invitation that permitted a pooled photographer to be present in the courtroom. The appropriate sanction, under the circumstances, to ensure that Mr. Jeffs is able to communicate confidentiality with accused in the courtroom and that he receives a fair trial, is to exclude *all* photographers from the courtroom.

Finally, we continue to be appalled that law enforcement is routinely leaking information to the media. The same April 5<sup>th</sup> *Deseret Morning News* article confirms that the contents of the note were corroborated by a law enforcement source. That can only mean that a law enforcement source either read Mr. Jeffs private note or that a law enforcement source was in possession of the note when he/she spoke with the media. Again, this strikes the defense as an outrageous breach of privacy that jeopardizes Mr. Jeffs' ability to receive a fair trial. We urge the Court to formulate a remedy and a sanction for this pattern of law enforcement leaks.

Thank you for your consideration of this matter.

Yours truly,

  
Walter F. Bugden, Jr.

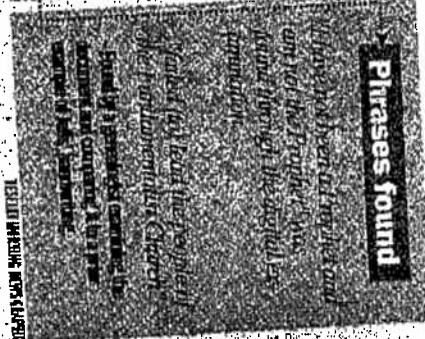
WFB:sw  
Enclosure  
cc: Brock Belnap  
Richard Wright



### Enhancing a photo

The photo is flopped (or reversed) to make the note read right.

How the Deseret Morning News was able to decipher a note passed by Warren Jeffs during his hearing



# 'I am not the Prophet,' says note by Jeffs

Copyright 2007 Deseret Morning News

By Ben Winslow  
Deseret Morning News

Warren Jeffs apparently abdicated his position as president of the Fundamentalist LDS Church in a note he wanted to give to the

judge handling the criminal case against him. The note is partially visible in photographs taken at the end of Jeffs' court appearance last week. The Deseret Morning News had the photographs analyzed by a digital enhancement expert, a forensic

handwriting analyst and a genealogist. "I have not been a Prophet and am not the Prophet," one line that is visible reads. The contents of the note were also corroborated by law enforcement sources who spoke to the

Deseret Morning News on the condition of anonymity. A thin and frail-looking Jeffs attempted to speak to the judge after a long day of hearings in St. George's 6th District Court last

Please see **ENHANCING** on A7



SCOTT G. WINTERTON, DESERET MORNING NEWS

Above and below, defense attorney Walter Bugden Jr., left, takes a paper that Warren Jeffs, right, had attempted to give to Judge James Shumate after a motion hearing on Tuesday in St. George.

## ENHANCING

Continued from A1

week.

"May I approach the bench?" Jeffs asked Judge James Shumate. "I need to just take care of one matter."

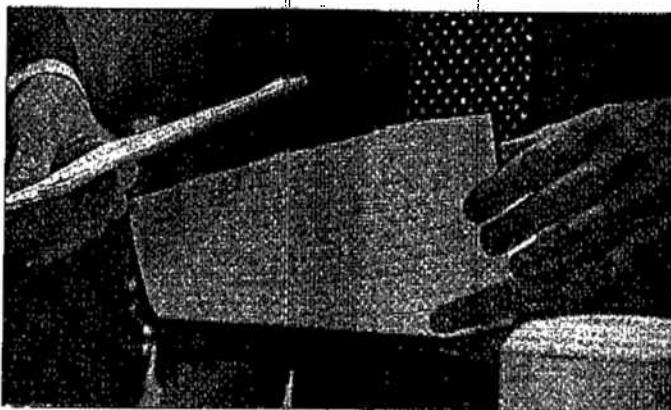
Shumate refused to hear it, urging Jeffs to speak to his lawyers.

"Can I take care of it now?" Jeffs asked again.

The polygamist sect leader then bent over and wrote something down on a pad of paper. His hands shaking, he fumbled as he tried to tear at the paper, but he needed help. A Deseret Morning News photographer representing the media in the courtroom took pictures of the event.

The image of the note was shot from a distance, and the writing is fuzzy. Some sentences have been deciphered, including a line Jeffs wrote saying he "failed (to) lead the people of the Fundamentalist Church."

Jeffs was immediately surrounded by Washington County sheriff's deputies, and his lawyers took the paper from him. Outside of court, Jeffs' defense attorney, Walter Bugden Jr., declined to comment on why his client wanted to speak to the judge. He said



SCOTT G. WINTERTON, DESERET MORNING NEWS

they would appeal the judge's rejection of his motions challenging the criminal case against the FLDS leader.

Bugden declined to comment to the Deseret Morning News Wednesday.

The Washington County Sheriff's Office also refused to comment on the note. The Utah Attorney General's Office said it was unaware of the note's contents.

"I can't acknowledge the existence or lack of existence of a statement by the defendant Jeffs," Deputy Washington County Attorney Brian Filter said.

The Deseret Morning News reported last week that Jeffs had reportedly renounced his position as prophet of the FLDS Church in a jailhouse conversation with one of his brothers. A law enforcement source said the conversation

was recorded by Purgatory Jail officials, who monitor his calls. That tape is in the custody of the Washington County attorney, who would not comment.

Other law enforcement agencies have refused to confirm or deny the tape's existence.

In Arizona, where Jeffs faces charges accusing him of performing more child-bride marriages, Mohave County Attorney Matt Smith would not rule out using any tape as evidence.

"It would not be appropriate for me to comment on anything that I've learned about what's going on in Washington County," Smith said in an e-mail to the Deseret Morning News. "Obviously, if Warren Jeffs made statements along

newspaper article. I would be very interested in their potential use at a trial.

Jeffs faces criminal charges in Utah of rape as an accomplice, a first-degree felony. He is accused of performing a child-bride marriage. A hearing is scheduled April 23 to discuss a motion suppressing evidence in the case against the polygamist leader.

late Tuesday, Bugden filed a petition under seal in court. Court minutes indicate an order was also filed under seal. Typically, such filings deal with matters of evidence

media) or psychological issues. Bugden also declined to discuss the filings when contacted by the Deseret Morning News Wednesday.

In August 2006, Jeffs was arrested in a traffic stop outside Las Vegas. At the time, he was on the FBI's "Most Wanted" list. The computer documents, cell phones, credit cards and other items seized from the car and the vehicle are part of an evidence battle.

Defense attorneys asked to delay a hearing at Nevada federal court on the outcome of a similar case over evidence in Utah. In month Jeffs was indicted on federal grand jury. Lake County was indicted on federal grand jury. Prosecution.

E-MAIL: bms@deseret.com