2007 DEC 27 PM 2:04
WASHINGTON COUNTY

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IN THE FIFTH DISTRICT COURT IN AND FOR WASHINGTON COUNTY

STATE OF UTAH

STATE OF UTAH, Plaintiff, vs. WARREN STEED JEFFS, Defendant.	**MEDIA INTERVENORS' OBJECTION AND MOTION FOR ACCESS TO DEFENDANT'S SEALED FILING RE: MOTION FOR NEW TRIAL** Criminal No. 061500526 Judge James L. Shumate
ASSOCIATED PRESS, CNN, DESERET NEWS PUBLISHING COMPANY, publisher of the *DESERET MORNING NEWS*, *THE SALT LAKE TRIBUNE*, *THE SPECTRUM*, *THE DAILY HERALD*, BONNEVILLE INTERNATIONAL CORPORATION d/b/a KSL-TV, FOUR POINTS MEDIA GROUP OF SALT LAKE CITY, INC. d/b/a KUTV 2 NEWS, THE UTAH MEDIA COALITION, and THE UTAH HEADLINERS CHAPTER OF THE SOCIETY OF PROFESSIONAL JOURNALISTS, Intervenors.	

Media Intervenors the Associated Press, CNN, *Deseret Morning News*, *The Salt Lake Tribune*, *The Spectrum*, *The Daily Herald*, KSL-TV, KUTV 2 News, the Utah Media Coalition, and the Utah Headliners Chapter of the Society of Professional Journalists (collectively the "Media Intervenors"), through their undersigned counsel, object to Defendant's filing of a sealed submission in support of his Motion for New Trial, and respectfully move the Court as follows:

1. Media Intervenors move the Court to order the immediate release of Defendant's sealed submission, together with any other court records or submissions relating thereto that are under seal and to which the public has been denied access.

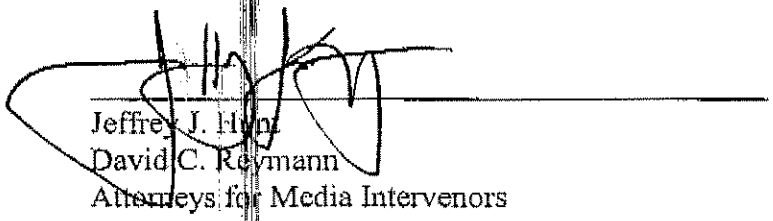
2. Alternatively, Media Intervenors request that the Court order Defendant to provide counsel for the Media Intervenors' a copy of the sealed memorandum as well as any other sealed filings, and provide counsel for Media Intervenors an opportunity to object to closure of such memorandum and other filings.

3. In light of Defendant's persistent refusal to provide Media Intervenors prior notice and an opportunity to contest the denial of public access to his sealed submissions <u>before</u> the filing of such submissions – a practice that contravenes the prior orders of this Court, Rule 4-202.04 of the *Utah Rules of Judicial Administration*, and established constitutional case law – Media Intervenors move the Court to order Defendant to cease filing court records in this case under seal without first complying with the foregoing procedural notice and hearing requirements established by law.

This Objection and Motion are supported by a Memorandum of Points and Authorities submitted herewith, together with the other pleadings and submissions on file herein.

RESPECTFULLY SUBMITTED this 26th day of December 2007.

PARR WADDOUPS BROWN GEE & LOVELESS



Jeffrey J. Hunt
David C. Reymann
Attorneys for Media Intervenors

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26th day of December 2007, a true and correct copy of the foregoing **MEDIA INTERVENORS' OBJECTION AND MOTION FOR ACCESS TO DEFENDANT'S SEALED FILING RE: MOTION FOR NEW TRIAL** was sent via United States mail, postage prepaid to:

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2007 DEC 27 PM 2:04
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BY

IN THE FIFTH DISTRICT COURT IN AND FOR WASHINGTON COUNTY

STATE OF UTAH

STATE OF UTAH, Plaintiff, vs. WARREN STEED JEFFS, Defendant.	**MEMORANDUM IN SUPPORT OF MEDIA INTERVENORS' OBJECTION AND MOTION FOR ACCESS TO DEFENDANT'S SEALED FILING RE: MOTION FOR NEW TRIAL** Criminal No. 061500526 Judge James L. Shumate
ASSOCIATED PRESS, CNN, DESERET NEWS PUBLISHING COMPANY, publisher of the *DESERET MORNING NEWS*, *THE SALT LAKE TRIBUNE*, *THE SPECTRUM*, *THE DAILY HERALD*, BONNEVILLE INTERNATIONAL CORPORATION d/b/a KSL-TV, FOUR POINTS MEDIA GROUP OF SALT LAKE CITY, INC. d/b/a KUTV 2 NEWS, THE UTAH MEDIA COALITION, and THE UTAH HEADLINERS CHAPTER OF THE SOCIETY OF PROFESSIONAL JOURNALISTS, Intervenors.	

Media Intervenors the Associated Press, CNN, *Deseret Morning News*, *The Salt Lake Tribune*, *The Spectrum*, *The Daily Herald*, KSL-TV, KUTV 2 News, the Utah Media Coalition, and the Utah Headliners Chapter of the Society of Professional Journalists (collectively the "Media Intervenors"), through their undersigned counsel, respectfully submit this Memorandum in Support of Their Objection and Motion for Access to Defendant's Sealed Filing Re: Motion for New Trial.

The grounds for this Objection and Motion are as follows:

1. On or about December 4, 2007, Defendant filed a Motion for New Trial herein. Although counsel for the Media Intervenors are listed on the certificate of service to the Motion, media counsel did not receive a copy of Defendant's Motion.

2. The Media Intervenors are advised that Defendant also filed a memorandum in support of his Motion for New Trial, but that the memorandum was submitted under seal, is not listed on the Court's docket in this case, and is not accessible to the public or the news media.

3. Counsel for the Media Intervenors have not been served or provided a copy of Defendant's sealed memorandum.

4. The Court previously entered an order permitting counsel for Media Intervenors to receive such sealed filings (on an attorneys' eyes only basis) so that counsel may ascertain whether the sealed filing is permissible under the Court's previous rulings and orders concerning

access to court filings in this case, and to challenge Defendants' penchant for sealed filings. *See* Order on Closure Briefing dated June 29, 2007.

5. Defendant's filing of this court record under seal and denying the public access to such record, without first affording the Media Intervenors notice and the opportunity to appear and contest such closure, is contrary to the constitutional principles established by the United States Supreme Court in *Press-Enterprise Co. v. Superior* Court, 478 U.S,. 1, 106 S. Ct. 2735 (1986), and the Utah Supreme Court in *Society of Professional Journalists v. Bullock*, 743 P.2d 1165, 1174-75 & n. 9 (Utah 1987); *Kearns-Tribune v. Lewis*, 685 P.2d 515, 518 (Utah 1984), Rule 4-202.04 of the *Utah Rules of Judicial Administration*, and the prior rulings and orders of this Court.

6. Defendant has made no attempt to satisfy the constitutional standard for closing a presumptively public court record under *Press-Enterprise Co. v. Superior* Court, 478 U.S,. 1, 106 S. Ct. 2735 (1986), *State v. Archuleta*, 857 P.2d 234 (Utah 1993), and *Kearns-Tribune v. Lewis*, 685 P.2d 515, 518 (Utah 1984).

7. In light of Defendant's persistence in presumptively filing motions, memoranda and other submissions under seal in this case, without providing Media Intervenors prior notice and an opportunity to contest such closure as required by law, the Court should expressly order Defendant to cease filing court records in this case under seal without first complying with the procedural notice and hearing requirements set forth above.

8. In addition to the foregoing, the Media Intervenors' Objection and Motion is supported by the Media Intervenors previously filed memoranda in support of motions for access to court records herein, including Memorandum in Support of Motion for Entry of Order Concerning Briefing and Hearing on Closure Motions dated June 22, 2007; Reply Memorandum in Support of Motion for Entry of Order Concerning Briefing and Hearing on Closure Motion dated June 27, 2007; Media Intervenors' Memorandum in Opposition to Defendants' Motion for Closure of Defendants' Motions in Limine and Suppression Hearings dated July 12, 2007; and Media Intervenors' Objection to Defendant's Notice of Filing Under Seal, and Motion for Access to Sealed Filing dated September 12, 2007.

For the foregoing reasons, the Media Intervenors respectfully request that the Court immediately release and make available to the public Defendant's sealed memorandum in support of Motion for New Trial and any other court records or submissions relating thereto that are under seal and to which the public has been denied access. Alternatively, the Media Intervenors request that the Court order Defendant to provide counsel for the Media Intervenors a copy of the sealed memorandum as well as any other sealed filings, and provide Media Intervenors an opportunity to object to closure of such memorandum and other filings.

RESPECTFULLY SUBMITTED this 26th day of December 2007.

PARR WADDOUPS BROWN GEE & LOVELESS

Jeffrey J. Hunt
David C. Reymann
Attorneys for Media Intervenors

243057.1

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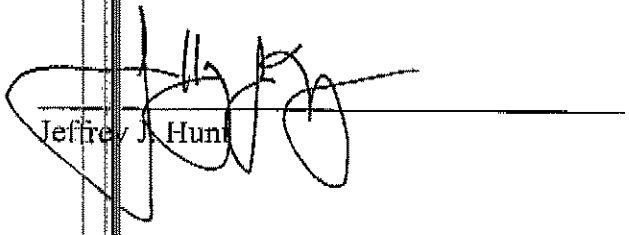

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