

Cooke, et al. v. Town of Colorado City, et al.

Case No. 3:10-CV-08105-PCT-JAT

LODGED:

Plaintiff-Intervenor State of Arizona's Motion to Re-open the Evidentiary Record

1 THOMAS C. HORNE
2 ATTORNEY GENERAL
3 Firm No. 14000
4 Sandra R. Kane, No. 007423
5 Brad K. Keogh, No. 010321
6 Leslie A. Ross, No. 027207
7 Assistant Attorneys General
8 Civil Rights Division
9 1275 West Washington Street
10 Phoenix, AZ 85007
11 Telephone: (602) 542-8862
12 CivilRights@azag.gov
13 Attorneys for Plaintiff-Intervenor
14 State of Arizona

11 **IN THE UNITED STATES DISTRICT COURT**
12 **FOR THE DISTRICT OF ARIZONA**

13 RONALD COOKE and JINJER COOKE,
14 husband and wife,
15 Plaintiffs,

16 THE STATE OF ARIZONA *ex rel.* THOMAS C.
17 HORNE, the Attorney General; and THE CIVIL
18 RIGHTS DIVISION OF THE ARIZONA
19 DEPARTMENT OF LAW,
20 Plaintiff/Intervenor,

21 vs.

22 TOWN OF COLORADO CITY, ARIZONA; *et*
23 *al.*
24 Defendants.

No. 10-CV-08105-PCT-JAT

**PLAINTIFF-INTERVENOR STATE
OF ARIZONA'S MOTION FOR
LEAVE TO RE-OPEN THE
EVIDENTIARY RECORD**

25 Pursuant to Rule 1 and Rule 60(b)(2), (3) and (6), *Federal Rules of Civil Procedure*,
26 Plaintiff-Intervenor State of Arizona (the "State") respectfully moves the Court for leave to re-
27 open the evidentiary record to admit compelling post-trial newly discovered evidence: the
28 sworn confessions of perjury by current Colorado City Marshal/Hildale Chief of Police
Helaman Barlow ("Marshal Barlow") in his trial and deposition testimony in this case and in

1 the related action brought against the Defendants by the U.S. Department of Justice. This
2 evidence is critical to this Court's determination of the State's claim for injunctive and
3 affirmative relief, particularly with respect to law enforcement, and the extent of relief
4 necessary to stop Defendants' discrimination and interference with enjoyment of housing rights
5 because of religion and to remove the lingering effects of such discrimination. This evidence
6 did not exist until after the trial. The State, therefore, could not have brought it to the Court's
7 attention before the end of trial with reasonable diligence.

8 Consequently, in the interests of justice, to correct the perjurious trial record, and to
9 make a fully informed and effective judgment on the injunctive and affirmative relief necessary
10 in this case, the Court should re-open the evidentiary record and admit this extraordinary newly
11 discovered evidence.

12 **THE NEWLY DISCOVERED EVIDENCE**

13 1. On April 22, 2014, a little over one month after the trial in this case, Marshal
14 Barlow confessed under oath at his deposition in related litigation, *United States v. Town of*
15 *Colorado City, et al.*, No. 3:12-cv-8123-HRH ("the DOJ case"), that he had lied throughout his
16 trial and deposition testimony in this case.¹

17 2. Contrary to defense counsel's gross mischaracterization of Marshal Barlow's new
18 testimony as merely "inconsistent" with his trial testimony (*see Colorado City's Notice*
19 *Regarding Witness Trial Testimony* [Doc. 659] at ¶ 2), the following excerpt of Marshal
20 Barlow's April 22, 2014 deposition reveals that Marshal Barlow actually confessed under oath
21 to repeatedly lying in his trial and deposition testimony in this case and his deposition
22 testimony in the DOJ case:

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24
25 ¹ A true and correct copy of the entire transcript of the April 22, 2014 deposition of
26 Helaman Barlow in the DOJ case is attached as Exhibit A hereto and incorporated by this
27 reference to provide the Court with the full context for the newly discovered testimony cited
28 herein.

1 Q. The question is very simple: It's true that you – you just admitted that you
2 lied during the Cooke deposition; true?

3 A. There is that possibility, yes.

4 Q. And you lied during the Cooke trial?

5 A. Yes, I can think of that.

6 Q. And you lied during your Utah POST interview?

7 A. Again, I may have, but I'd have to see specifically what you're referring
8 to, but . . .

9 Q. And you lied during your November deposition with the Department of
10 Justice?

11 A. Yes.²
12

13 This testimony also suggests a willingness by Marshal Barlow to be dishonest with the Utah
14 POST agents who regulate and monitor his certification as a peace officer.

15 3. The background to these confessions of perjury starts on April 2, 2014, less than
16 two weeks after the trial in this case. Around that date, Defendants placed Marshal Barlow on
17 administrative leave with pay.³

18 4. After being placed on administrative leave, Marshal Barlow had concerns about
19 the safety of Willie Jessop, a key witness for Plaintiffs in this case and in the DOJ case.⁴

20 5. For that reason, on April 2, 2014, after being placed on administrative leave,
21 Marshal Barlow called Sheriff Pulsipher of Washington County, Utah to inform the Sheriff that
22 he was on administrative leave and to express concern that his deputies, in his absence, would
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25 _____
26 ² See Exhibit A, p. 179, line 22-p. 180, line 9.

27 ³ See Exhibit A, p. 100, lines 17-20.

28 ⁴ See Exhibit A, p. 100, line 17 – p. 101, line 12.

1 feel empowered to “mess with” and arrest Willie Jessop, a non-member of the FLDS Church,
2 without having the probable cause to do so.⁵

3 6. Thereafter, Marshal Barlow retained personal criminal counsel and sought, and
4 received, immunity from, among others, the Arizona Attorney General’s Office and the United
5 States Department of Justice.⁶ He then participated in a continuation of his deposition in the
6 DOJ case.

7 7. At the April 22, 2014 continuation of Marshal Barlow’s deposition in the DOJ
8 case (the “April 2014 Deposition”), Marshal Barlow, who was no longer an FLDS Church
9 member, confessed under oath that he had concern that the other deputies in the Marshal’s
10 Office were more loyal to Lyle Jeffs (the local FLDS bishop and brother of jailed FLDS
11 Prophet Warren Jeffs) than they were to their oath of office.⁷

12 8. At the April 2014 Deposition, Marshal Barlow confessed under oath that he had
13 lied during his trial testimony in this case when he denied that the Colorado City/Hildale
14 Marshal’s Office discriminated in favor of members of the FLDS Church and against non-
15 members of the FLDS Church.⁸

16 9. At the April 2014 Deposition, Marshal Barlow further confessed that he in fact
17 knew of and had personally witnessed his deputies discriminating in favor of members of the
18 FLDS Church and against non-members of the FLDS Church.⁹

19 10. At the April 2014 Deposition, Marshal Barlow confessed that, for decades, the
20 Colorado City/Hildale Marshal’s Office would “slow walk” or otherwise obstruct the activities
21 of outside law enforcement agencies in Hildale and Colorado City in order to protect members
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24 ⁵ *See id.*

25 ⁶ *See Exhibit A, p. 155, line 6-p. 159, line 17.*

26 ⁷ *See Exhibit A, p. 103, lines 9-14.*

27 ⁸ *See Exhibit A, p. 200, line 8-p. 201, line 8.*

28 ⁹ *See Exhibit A, p. 200, line 8-p. 201, line 8.*

1 of the FLDS Church or others whom the FLDS Church cared about.¹⁰ “Slow walking”
2 involved announcing over the police radio when outside law enforcement were looking for
3 someone in town so that FLDS Church members listening to the radio broadcasts could help
4 protect the targeted FLDS Church member.

5 11. At the April 2014 Deposition, Marshal Barlow also confessed that the FLDS
6 Church played an active role in selecting who would attend the police academy, under both his
7 administration and the administration of at least the two prior Marshals/Chiefs of Police.¹¹

8 12. At the April 2014 Deposition, Marshal Barlow also confessed that during his
9 tenure as Chief he had had to stop his deputies on numerous occasions from charging non-
10 members of the FLDS Church with crimes because his deputies did not have the probable cause
11 to do so.¹²

12 13. At the April 2014 Deposition, Marshal Barlow confessed that Colorado City
13 Town Manager, David Darger, had materially altered a police report to the detriment of the
14 subject non-member of the FLDS Church and to the benefit of the FLDS Church member
15 deputy.¹³

16 14. At the April 2014 Deposition, Marshal Barlow confessed that he had lied during
17 his trial testimony in this case when he denied any knowledge or intent that his secret tape
18 recording of a meeting with Texas law enforcement authorities would be transported to federal
19 fugitive Warren Jeffs.¹⁴

24 ¹⁰ See Exhibit A, p. 23, line 18-p. 24, line 24; p. 48, lines 12-20.

25 ¹¹ See Exhibit A, p. 53, line 23-p. 55, line 21.

26 ¹² See Exhibit A, p. 148, line 16-p. 149, line 8.

27 ¹³ See Exhibit A, p. 108, line 8-p. 119, line 6.

28 ¹⁴ See Exhibit A, p. 38, line 2-p. 40, line 10; p. 181, line 1-p. 186, line 12.

1 15. At the April 2014 Deposition, Marshal Barlow confessed that he had in fact given
2 his secret tape recording to people whom he felt would very likely get it to federal fugitive
3 Warren Jeffs.¹⁵

4 16. At the April 2014 Deposition, Marshal Barlow confessed that he had lied during
5 his trial testimony in this case when he denied secretly tape recording other meetings with law
6 enforcement authorities and thereafter taking steps to ensure that these secret recordings were
7 sent to federal fugitive Warren Jeffs.¹⁶

8 17. At the April 2014 Deposition, Marshal Barlow confessed that he had in fact
9 secretly taped recorded a second meeting with Texas law enforcement authorities, as well as
10 two other meetings with the FBI, and that he had given these secret recordings to people whom
11 he felt would very likely get them to federal fugitive Warren Jeffs.¹⁷

12 18. At the April 2014 Deposition, Marshal Barlow confessed that he had lied during
13 his trial testimony in this case when he denied any knowledge whether the FLDS Church had
14 access to municipal surveillance cameras.¹⁸

15 19. At the April 2014 Deposition, Marshal Barlow confessed that he in fact knew that
16 municipal surveillance cameras were tied into the FLDS Church and that FLDS Church
17 security had access to the municipal surveillance cameras.¹⁹

18 20. At the April 2014 Deposition, Marshal Barlow confessed that he had attended
19 numerous meetings with Hildale and Colorado City officials, with FLDS Legal Coordinator
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24 ¹⁵ See Exhibit A, p. 185, line 5-p. 186, line 1.

25 ¹⁶ See Exhibit A, p. 38, line 2-p. 39, line 22; p. 181, lines 3-9.

26 ¹⁷ See Exhibit A, p. 38, line 2-p. 39, line 22; p. 180, line 19-p. 186, line 12.

27 ¹⁸ See Exhibit A, p. 75, lines 8-17; p. 197, line 16-p. 199, line 10.

28 ¹⁹ See Exhibit A, p. 75, lines 8-17; p. 197, line 16-p. 199, line 10.

1 Willie Jessop in attendance, to formulate legal strategies “as to how best to protect our church
2 or church members.”²⁰

3 21. At the April 2014 Deposition, Marshal Barlow confessed that, at the direction of
4 the FLDS Church, the Colorado City/Hildale Marshal’s Office knowingly compromised its
5 ability to conduct criminal investigations by obeying an FLDS Church edict to immediately
6 stop using the Internet.²¹

7 22. At the April 2014 Deposition, Marshal Barlow confessed that two of his deputies
8 had been prevented by Mohave County Sheriff’s deputies from arresting Willie Jessop, after
9 Mr. Jessop ended his adherence to Warren Jeffs.²²

10 23. At the April 2014 Deposition, Marshal Barlow confessed that, even after
11 acquiring personal knowledge that certain men, including former peace officer Jonathan
12 Roundy, had married an underage girl while employed at the Marshal’s Office, he did not
13 initiate any criminal or other investigation of Jonathon Roundy or of any other FLDS Church
14 members who had married an underage girl.²³

15 24. At the April 2014 Deposition, Marshal Barlow confessed that, upon receipt of a
16 discovery request from the United States Department of Justice, he and Colorado City
17 Manager, David Darger, materially altered numerous police reports which were incomplete or
18 internally inconsistent because these police reports made the Colorado City/Hildale Marshal’s
19 Office “look bad.”²⁴

24 ²⁰ See Exhibit A, p. 37, lines 1-9.

25 ²¹ See Exhibit A, p. 29, line 8-p. 31, line 15.

26 ²² See Exhibit A, p. 43, line 24-p. 44, line 11.

27 ²³ See Exhibit A, p. 51, lines 5-12.

28 ²⁴ See Exhibit A, p. 119, line 7-p. 121, line 3.

1 25. At the April 2014 Deposition, Marshal Barlow confessed that he was afraid to
2 testify truthfully earlier because if he had done so it could have jeopardized his employment
3 and his associations within the community.²⁵

4 26. At the April 2014 Deposition, Marshal Barlow confessed that his now truthful
5 testimony was his effort to correct all the lies he told during the trial in this case.²⁶

6 As the Court will recall, Defendants called Marshal Barlow (and Sgt. Sam Johnson) in
7 their case-in-chief to testify that the Colorado City/Hildale Marshal's Office was not controlled
8 by the FLDS Church; that the Marshal's Office treated members and non-members of the
9 FLDS Church equally with regard to fair housing in particular, and to life in general in Hildale
10 and Colorado City; that the Marshal's Office fully cooperated at all times with outside law
11 enforcement agencies; that the FLDS Church did not have access to municipal surveillance
12 cameras; and that the Marshal's Office did not aid and abet a federal fugitive, FLDS Prophet
13 Warren Jeffs, by providing him with secret tape recordings of meetings with outside law
14 enforcement agencies.²⁷

15 Marshal Barlow has now confessed under oath that he lied about all of these things, and
16 that he did it all for the FLDS Church. Perjury is a felony crime, which certainly explains why
17 Marshal Barlow retained personal criminal counsel and sought and received immunity from the
18 State and from the United States before he confessed to his false testimony and other
19 misconduct.

20 Marshal Barlow's sworn confessions of perjury prove that the Colorado City/Hildale
21 Marshal's Office has operated for decades, and continues to operate, as the *de facto* law
22 enforcement arm of the FLDS Church in support of the FLDS Church's discriminatory policies
23 and practices regarding housing in particular, and life in general in the FLDS-controlled towns
24 of Hildale and Colorado City. His sworn confessions reveal the unique nature and duration of
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26 ²⁵ See Exhibit A, p. 190, lines 17-25.

27 ²⁶ See Exhibit A, p. 205, lines 4-14.

28 ²⁷ See Final Pretrial Order dated 6/25/13, p. 8, lines 21-28; p. 43, lines 2-3; p. 47, lines 17-18.

1 the discriminatory conduct and criminal activity pervasive throughout the Colorado
2 City/Hildale Marshal's Office, and demonstrate precisely why the appointment of a monitor,
3 even one with daily operational control and hiring and firing authority, would be inadequate
4 and insufficient to remedy such serious misconduct and protect the public, particularly the non-
5 FLDS residents of Colorado City and Hildale, from further discrimination and harm. After all,
6 if the police personnel cannot respect their obligations to testify truthfully before a federal
7 judge and jury, they can be expected to equally disrespect and deceive any court-appointed
8 monitor.

9 Tailoring the law enforcement-related injunctive relief to remedy the specific harms
10 proven at trial, and now corroborated by Marshal Barlow's post-trial sworn confessions of
11 perjury, leads to the inescapable conclusion that the disbandment of the Colorado City/Hildale
12 Marshal's Office is the *only* remedy that will stop the FLDS-controlled towns of Hildale and
13 Colorado City from using their willing participant Marshal's Office as a tool to perpetuate their
14 historical discriminatory pattern and practice of interfering with the fair housing rights and
15 other rights of non-FLDS people. The longstanding, pervasive, secretive, and ongoing
16 discriminatory conduct and criminal activity rampant throughout the currently five-man
17 Marshal's Office simply cannot be remedied by a monitor "watching" it, nor would non-FLDS
18 members of the public be adequately protected from further discrimination and harm. The
19 State, therefore, has submitted a proposed form of Judgment that includes the remedy of the
20 disbandment of the Colorado City/Hildale Marshal's Office.

21 Marshal Barlow's admissions of perjury and other sworn post-trial confessions about the
22 FLDS-controlled, discriminatory operations of the Marshal's Office and its officers also reveal
23 and corroborate the decades-old, still ongoing, and all-encompassing control the FLDS Church
24 exercises over Defendants' critical services and employees – control so corrupt it encourages
25 police officers to engage in criminal conduct, abuse their arrest and prosecutorial powers, and
26 to violate the civil rights of those persons the FLDS Church considers its enemies. The
27 evidence of such deeply engrained discriminatory intent and religious control over municipal
28

1 operations proves that the disbandment of the Marshal's Office and the other injunctive relief
2 sought by the State is necessary to ensure the protection of housing rights that have been
3 violated by the Defendants for so long.

4 **CONCLUSION**

5 Rule 1, *Federal Rules of Civil Procedure*, provides that the Rules should be "construed
6 and administered to secure the just . . . determination of every action and proceeding." Rule
7 60(b)(2), (3) and (6), *Federal Rules of Civil Procedure*, provide for judicial relief predicated
8 upon newly discovered evidence, the fraud of an opposing party, and principles of fundamental
9 fairness.

10 Marshal Barlow's post-trial sworn confessions of perjury and misconduct constitute
11 compelling newly discovered evidence which is critical to this Court's consideration of the law
12 enforcement-related and other injunctive and affirmative relief being sought by the State. In
13 the interests of justice, to correct the perjurious trial record, and to determine the necessary and
14 appropriate remedy for Defendants' pattern or practice of resistance to full enjoyment of
15 housing rights because of religion, the Court should re-open the evidentiary record and admit
16 into evidence and consider this newly discovered evidence in fashioning injunctive relief.

17 RESPECTFULLY SUBMITTED this 16th day of June, 2014.

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19
20 THOMAS C. HORNE
ATTORNEY GENERAL

21
22 By /s/ Sandra R. Kane _____
23 Sandra R. Kane
24 Brad K. Keogh
25 Leslie A. Ross
26 Assistant Attorneys General
27 Attorneys for Plaintiff-Intervenor
28 State of Arizona

CERTIFICATE OF SERVICE

I hereby certify that on June 16, 2014, I caused the foregoing Plaintiff-Intervenor State of Arizona’s Motion for Leave to Re-open the Evidentiary Record to be filed electronically with the Clerk of the Court through ECF; and that ECF will send an e-notice of that electronic filing to the following ECF participants:

William G. Walker, Esq.
William G. Walker, P.C.
177 N. Church Avenue, Suite 700
Tucson, AZ 85701
Attorney for Plaintiffs Ronald and Jinjer Cooke

William A. Richards, AZ Bar No. 013381
BASKIN RICHARDS PLC
2901 N. Central Avenue, Suite 1150
Phoenix, AZ 85012
Attorney for Plaintiff-Intervenor State of Arizona

Jeffrey C. Matura, Esq.
Asha Sebastian, Esq.
GRAIF BARRETT & MATURA, P.C.
1850 North Central Avenue, Suite 500
Phoenix, AZ 85004
Attorneys for Defendant Town of Colorado City, Arizona

R. Blake Hamilton, Esq.
Durham Jones & Pinegar
111 E. Broadway, Suite 900
Salt Lake City, UT 84111
Attorneys for Defendants City of Hildale, Utah; Hildale-Colorado City Utilities; Twin City Water Authority; and Twin City Power

By /s/ Donna Chrisjohn

3852350