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

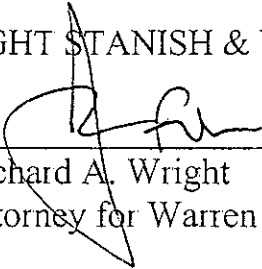
STATE OF ARIZONA,)	NO. CR-2007-953
)	
Plaintiff,)	DEFENDANT JEFFS'
)	MOTION FOR REMAND
vs.)	
)	
WARREN STEED JEFFS,)	[Oral Argument Requested]
)	
Defendant.)	[Hon. Steven F. Conn]
)	

The defendant, Warren Jeffs, by and through his undersigned attorney, hereby respectfully requests this Court, pursuant to Rule 12.9 of the Arizona Rules of Criminal Procedure, to issue its order remanding his indictment due to improprieties in the grand jury presentation. This motion is based on the legal reasoning and authorities set forth in the attached Memorandum of Points and Authorities.

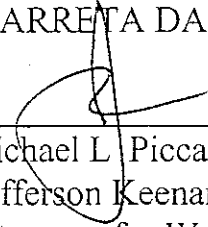
1 RESPECTFULLY SUBMITTED this 13th day of May, 2008.

2 WRIGHT STANISH & WINCKLER

3 PICCARRETA DAVIS PC

4 By  _____

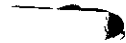

5 Richard A. Wright
6 Attorney for Warren Jeffs


4 By  _____

5 Michael L. Piccarreta
6 Jefferson Keenan
7 Attorneys for Warren Jeffs

7 MEMORANDUM OF POINTS AND AUTHORITIES

8 I STATEMENT OF FACTS

9
10 The defendant, Warren Jeffs, stands charged as an accomplice to the crimes
11 of sexual conduct with a minor and incest. Count 1 arises from an incident that,
12 according to the indictment, occurred on or about the 31st day of August, 2003,
13 wherein Leonard Barlow had sexual conduct with  who was under
14 18 years of age. Count 2 arises from the same incident and alleges that the sexual
15 conduct constituted incest. Count 3 of the indictment refers to an incident that
16 allegedly occurred in September of 2003 between Leonard Barlow and 

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

23
24 It is a matter of common knowledge that Mr. Jeffs and the practices of the
25 Fundamentalist Church of Latter Day Saints (FLDS) have been the subject of
26 extensive adverse media coverage throughout Mohave County. This already
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1 extensive coverage was exacerbated before, during, and after Mr. Jeffs' criminal
2 trial in Utah. Despite the vast extent of this publicity, the prosecutor conducted no
3 inquiry into the nature of the publicity to which the grand jurors were exposed,
4 and no meaningful inquiry to determine whether they could truly remain unbiased.
5

6 In addition, even though Mr. Jeffs stands charged as an accomplice, the
7 prosecutor inexplicably failed to instruct the grand jury on the statutory definition
8 of accomplice that the grand jury was to apply. Accordingly, the grand jury was
9 not instructed on the key statutory definition in the case. Moreover, the State also
10 presented inaccurate testimony to the grand jury and failed to present clearly
11 exculpatory information in several areas. The prejudicial conduct of the grand
12 jury presentation usurped the grand jury's role and denied Mr. Jeffs his right to
13 have a fair and unbiased grand jury base its decision on whether or not to indict
14 him on accurate information coupled with accurate instructions on the applicable
15 legal statutes. These facts will be addressed in detail in the discussion of the issues
16 to which they pertain.
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21 II. DISCUSSION

22 In *Maretick v. Jarrett*, 204 Ariz. 194, 62 P.3d 120 (2003), the Arizona
23 Supreme Court discussed the historic role of the grand jury and the unique
24 responsibility of the prosecutor who serves it:
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26 The Supreme Court has described the grand jury as "a primary
27 security to the innocent against hasty, malicious and oppressive
28

1 persecution; it serves the invaluable function in our society of
2 standing between the accuser and the accused...to determine whether
3 a charge is founded upon reason or was dictated by an intimidating
4 power or by malice or ill will” *Wood v. Georgia*, 370 U.S. 375, 390
5 [] (1962). The grand jury’s mission is “to bring to trial those who
6 may be guilty and clear the innocent” *Marston’s, Inc. v. Strand*, 114
7 Ariz. 260, 264, 560 P.2d 778, 782 (1977). To do its job effectively,
8 the grand jury must receive a fair and impartial presentation of the
9 evidence. *Crimmins [v Superior Court]*, 139 Ariz. [39], 41, 668
10 P.2d [882], 884 [(1983)]; *State v Emery*, 131 Ariz. 493, 506, 642
11 P.2d 838, 851 (1982). Because defendants enjoy few procedural
12 rights before the grand jury, grand juries must be unbiased and
13 independent and must act “independently of either prosecutor or
14 judge” *Marston’s*, 114 Ariz. at 264, 560 P.2d at 782.

11 *Id.* at 197, ¶ 8, 62 P.3d at 123.

12 In addition,

13
14 The prosecutor’s role before the grand jury is unique in our system.
15 The prosecutor acts not simply as an advocate, but as a “minister of
16 justice,” who assists the jurors in their inquiry. *See* Ariz R Sup Ct
17 42, ER 3.8 cmt. Prosecutors bear a “particularly weighty duty not to
18 influence the grand jury because the defendant has no representative
19 to watch out for his interests” before the grand jury. *State v Hocker*,
20 113 Ariz. 450, 454, 556 P.2d 784, 788 (1976). The prosecutor
21 therefore “must not take advantage of his or her role as the ex parte
22 representative of the state before the grand jury to unduly or unfairly
23 influence it.” 1 *ABA Standards for Criminal Justice*, Ch 3, Std. 3-
24 3.5 cmt. (2d ed 1980).

22 *Id.* at ¶ 10.

23 A. Mr. Jeffs Was Denied His Right To A Fair, Impartial And Unbiased
24 Grand Jury Because The Prosecutor Made No Inquiry Into The Type
25 And Extent Of Adverse Publicity To Which The Grand Jurors Were
26 Exposed And No Meaningful Inquiry To Determine Whether They
27 Could Truly Remain Unbiased.

27 Under Rule 12.9 of the Arizona Rules of Criminal Procedure, a defendant
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1 has the substantial due process right to a fair, impartial, and unbiased grand jury.
2 *Marston's*, 114 Ariz. at 264, 560 P.2d at 782; *Crimmins*, 137 Ariz. at 41, 668 P.2d
3 at 884.

4
5 "Every man, whatever the offenses of which he may be suspected, is as
6 much entitled to the just, impartial, and unbiased judgment of a grand jury as he is
7 to that of a petit jury on his final trial" *State v. Good*, 10 Ariz. App. 556, 559, 460
8 P.2d 662, 665 (1969) [citations omitted]. Because Mr. Jeffs is entitled to the same
9 impartiality from the grand jurors as from petit jurors, the prosecutor assisting the
10 grand jury was required to take "adequate measures to ensure that prospective
11 jurors' exposure to the publicity did not in fact deprive defendant of a fair trial."
12 *State v. Befford*, 157 Ariz. 37, 40, 754 P.2d 1141, 1144 (1988) Because a
13 defendant has neither his counsel nor a judge to look out for his interests,
14 *Maretick, supra*, it falls upon the prosecutor to conduct "individual voir dire to
15 assess the extent of the prospective jurors' knowledge of the case and their ability
16 to set aside any preconceived notions they had formed." *Befford*, 157 Ariz. at 40,
17 754 P.2d at 1144. *See also State v. LaGrand*, 153 Ariz. 21, 34, 734 P.2d 563, 576
18 (1987) [approving this procedure].
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24 Because the extensive nature of adverse pretrial publicity was an obvious
25 issue, there were several methods available to the prosecutor for dealing with the
26 matter. The prosecutor, at a minimum, could have contacted the presiding judge
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1 and requested the judge's assistance in determining the qualifications of the jurors
2 and/or guidance on how to proceed in the matter. The prosecutor could have had
3 the prospective grand jurors fill out a written questionnaire, or made a record in
4 some other fashion, to show exactly the nature and extent of the publicity to which
5 the grand jurors were exposed, in order to determine whether further examination
6 of the grand jurors on the subject was necessary, either through individualized voir
7 dire or some other method. Instead, the prosecutor did nothing. He allowed the
8 grand jurors to self-select – to determine for themselves whether they were
9 qualified to sit as jurors. The result is that there is no record whatsoever as to the
10 extent of the jurors' knowledge of adverse pretrial publicity and there is no
11 opportunity for meaningful analysis or review as to the ability of the jurors to sit
12 fairly on the case. The only remedy now is a remand.

17 After ascertaining that only one grand juror had not heard anything
18 "about Warren Jeffs or the case involving Colorado City," the prosecutor asked
19 only:

21 Does anybody feel because of some of the things that they have
22 either heard about from either television or radio or media
23 coverage that they cannot be fair and impartial with respect to an
24 investigation involving Warren Jeffs? If you do not believe you
25 can be fair and impartial, please raise your hand. Let the record
26 reflect no hands shown.

27 [Grand Jury Transcript, June 21, 2007, p 12].

28 The prosecutor then instructed the grand jury not to discuss anything they

1 may have seen or heard with other grand jurors, and then asked:

2 You have to consider and deliberate on this case based only on
3 what's presented in here. Does anyone have a problem with that?
4 Let the record reflect no hands shown

5 [*Id.*] This result was hardly surprising.

6 The Arizona Supreme Court has discussed the type of protective measures
7 that a trial court must undertake in cases involving extensive pretrial publicity and
8 inflammatory charges. The trial court has the responsibility of producing a "fully
9 developed oral voir dire record in deciding whether pretrial publicity actually
10 prejudiced the jury" *State v. Bible*, 175 Ariz 549, 566, 858 P.2d 1152, 1169
11 (1993). Indeed, given the extensive volume of pretrial publicity and the
12 inflammatory nature of the charges in the present case, the jurors should have
13 been subjected to individual voir dire:
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17 voir dire examination of a juror or jurors apart from the others is
18 designed to prevent panel contamination by inflammatory
19 answers. In camera voir dire, most useful in cases involving
20 massive publicity or "unusually sensitive subjects," is designed to
21 encourage full disclosure "when the prospective juror might be
embarrassed to confess his true opinion before an audience "

22 *Id.* at 570, 858 P.2d at 1173 [quoting comment to Ariz. R. Crim. P. 18.5(d)].

23 In *Bible*, the court found no error in the trial court's decision not to
24 engage in individualized or in camera voir dire because each of the members of
25 the jury panel had completed, under oath, a questionnaire containing 56
26 questions with numerous subparts covering a total of 30 pages, with many of
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1 the questions specifically directed at news media coverage. The questionnaire
2 was written by defense counsel and submitted to the jury panel with no changes
3
4 The trial court also conducted voir dire of the panel, asking questions he had
5 previously discussed with counsel for defendant and the state *Id.* at 569-70,
6 858 P.2d at 1172-73. Even with all of these precautions, the Arizona Supreme
7 Court noted that “[g]iven the nature of the case, including extensive pretrial
8 publicity and a small population, it might have been appropriate to have a more
9 extensive follow-up through oral voir dire.” *Id.* at 570, 858 P 2d at 1173
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11

12 In contrast, it is clear that there was no meaningful voir dire in the present
13 case. There was no written questionnaire, no individualized voir dire, no
14 attempt to ascertain the juror’s knowledge, and thus no meaningful
15 determination as to whether the individual was fit to sit as an impartial grand
16 juror. As the Arizona Supreme Court has recognized, it is extremely rare under
17 such circumstances that a juror would admit his inability to be fair before an
18 audience of fellow jurors. In the present case, none did.
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21 The Arizona Supreme Court has further recognized that media publicity
22 can be “so unfair, so prejudicial, and so pervasive that we cannot give any
23 credibility to the jurors’ answers during voir dire affirming their ability to
24 decide the case fairly.” *Bible*, 175 Ariz at 565, 858 P 2d at 1168. Obviously,
25 there must be an inquiry into the type of publicity that potential jurors were
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1 exposed to in order to determine whether the jurors can ignore the effect of that
2 publicity and decide the case fairly, and whether their promises to do so can be
3 believed.
4

5 Again, because Mr. Jeffs was entitled to the same impartiality from the
6 grand jurors as from the jurors who will be deciding his fate at trial, the
7 prosecutor cannot disregard these protective measures simply because this is
8 only a grand jury presentation. "The right to an impartial jury applies to both a
9 grand jury and a trial jury" *Herrell v. Sargeant*, 189 Ariz. 627, 631, 944 P.2d
10 1241, 1245 (1997). Indeed, the prosecutor must scrupulously safeguard the
11 defendant's rights. *Maretick, supra*. The lack of meaningful voir dire in the
12 present case would never pass muster in the context of a trial for all the reasons
13 set forth in *Bible, Befford, and LaGrand, supra*. Accordingly, it does not pass
14 muster in the grand jury context and Mr. Jeffs was denied his right to a fair,
15 impartial and unbiased grand jury. This matter must be remanded.
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20 B Mr. Jeffs Was Denied His Substantial Due Process Rights Because
21 The Prosecutor Failed To Instruct The Jury On The Applicable
22 Law.

23 The State drafted a proposed indictment alleging that Mr. Jeffs
24 "committed the crime of sexual conduct with a minor as an accomplice" and
25 that he "committed the crime of incest as an accomplice." [Emphasis added].
26 The grand jury returned the indictment, indicating their finding that there was
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1 probable cause to believe that Mr. Jeffs was an “accomplice” to the sexual
2 activity that may or may not have occurred between Leonard Barlow and [REDACTED]

3
4 However, the proposed indictment was accepted by the grand jury
5 even though the grand jury had never been instructed as to the elements of the
6 statutory definition of “accomplice” under the Arizona statutes. While the
7 prosecutor instructed the grand jury on criminal liability based upon conduct of
8 another pursuant to A.R.S. § 13-303, [Grand Jury Transcript, pp 10-11], he
9 never instructed the grand jury on the meaning of “accomplice” under A R S §
10 13-301.
11
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13 Arizona’s statutory definition of “accomplice” is complex:

14 In this title, unless the context otherwise requires, “accomplice”
15 means a person other than a peace officer acting in his official
16 capacity within the scope of his authority and in the line of duty,
17 who with the intent to promote or facilitate the commission of an
18 offense:

19 1. Solicits or commands another person to commit the
20 offense; or

21 2. Aids, counsels, agrees to aid or attempts to aid another
22 person in planning or committing the offense

23 3. Provides means or opportunity to another person to
24 commit the offense

25 A.R.S. § 13-301 This statutory definition contains numerous subparts and sub-
26 elements, and varies significantly from the common usage or ordinary meaning
27 of the term which is defined merely as “one associated with another especially
28

1 in wrongdoing” *Merriam-Webster’s Online Dictionary*. Accordingly, it was
2 incumbent upon the prosecutor to instruct the grand jury on the specialized
3 meaning of the term under the Arizona statutes.
4

5 It is axiomatic that the members of the grand jury must be instructed on
6 the law they are to apply. *State v. Baumann*, 125 Ariz 404, 409, 610 P.2d 38,
7 43 (1980) [conspiracy count remanded because the prosecutor failed to instruct
8 the grand jury on the overt act requirement of Arizona law of conspiracy] In
9 *Crimmins, supra*, the grand jury indicted the defendant for kidnapping a
10 suspected burglar, but the prosecutor never instructed the grand jury on the
11 defendant’s right to restrain a person and make a citizen’s arrest under Arizona
12 law. The Arizona Supreme Court reversed the trial court’s denial of the
13 defendant’s challenge to his indictment:
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17 We hold that the citizen’s arrest statutes were part of the applicable
18 law given the facts of the case, and it was the duty of the
19 prosecutor as legal advisor to the grand jury to instruct on that law.

20 *Crimmins*, 137 Ariz. at 42, 668 P.2d at 885. The court concluded:

21 Properly informed as to the facts and instructed as to the citizen’s
22 arrest statutes, the grand jury could have decided the propriety and
23 legal effect of *Crimmins’* reliance on the right of a private
24 individual to arrest a criminal suspect. This is a decision that
25 should have been made by the grand jury in weighing the question
26 of probable cause.

26 *Id.* at 43, 668 P.2d at 886. The court clearly reiterated “the proposition that
27 instruction on all the relevant statutes satisfies due process” *Id.* [emphasis
28

1 added].

2 Following the holdings of *Baumann* and *Crimmins*, other Arizona courts
3 have similarly held that defendants are entitled to a remand when the prosecutor
4 fails to instruct on the applicable legal statutes. In *Korzep v. Superior Court*,
5 172 Ariz. 534, 838 P.2d 1295 (App. 1991), the court held that the defendant
6 was entitled to a remand because the prosecutor failed to instruct the grand jury
7 on justification pursuant to A.R.S. § 13-411. The defendant was entitled to
8 remand due to the deficiency in the legal instructions even though there was no
9 claim of any problems with the factual presentation to the grand jury. In
10 *Herrell v. Sargeant*, 189 Ariz. 627, 944 P.2d 1241 (1997), the Arizona Supreme
11 Court also held that the defendant was entitled to a remand because the
12 prosecutor failed to instruct the grand jury on justification pursuant to A.R.S. §
13 13-411.

14 Because the grand jury was being asked to determine whether Mr. Jeffs
15 was an “accomplice” under Arizona law, the prosecutor was required to at least
16 instruct them as to the meaning of the term under the Arizona statutes. The
17 prosecutor’s failure to instruct the grand jury on the applicable law entitles Mr.
18 Jeffs to a remand. *Baumann, supra, Crimmins, supra, Korzep, supra, Herrell,*
19 *supra.*

1 C Mr. Jeffs Is Entitled To A Remand Because The State's
2 Presentation Of False And/Or Misleading Evidence And Failure
3 To Present Clearly Exculpatory Evidence Denied Mr. Jeffs His
4 Due Process Right To An Unbiased And Accurately Informed
Grand Jury.

5 Under Rule 12.9 of the Arizona Rules of Criminal Procedure, a defendant
6 also has the substantial due process right to a fair and impartial presentation of the
7 evidence in grand jury proceedings. *Crimmins v. Superior Court*, 137 Ariz. 39,
8 668 P.2d 882 (1983); *State v. Emery*, 131 Ariz. 493, 642 P.2d 838 (1982). A fair
9 and impartial presentation of evidence is precluded by the presentation of
10 erroneous or misleading evidence to the grand jury *Nelson v. Royston*, 137 Ariz.
11 272, 669 P.2d 1349 (App. 1983); *Escobar v. Superior Court*, 155 Ariz. 298, 746
12 P.2d 39 (App. 1987). Substantial due process in grand jury proceedings protects a
13 criminal defendant from "having an indictment returned against him with the use
14 of misleading testimony..." (*Royston*, 137 Ariz. at 277, 669 P.2d at 1354), and
15 being "tried on an indictment based on erroneous testimony." *Escobar*, 155 Ariz.
16 at 301, 746 P.2d at 42. A defendant is entitled to have his indictment remanded
17 whenever "evidence, whether intentionally or unintentionally false, has been
18 presented to the trier of fact and is used as a basis for finding probable cause"
19 *Royston*, 137 Ariz. at 277, 669 P.2d at 1354
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25 In addition, a defendant has the substantial due process right to have his
26 grand jury informed of clearly exculpatory evidence. *State v. Coconino County*,

1 139 Ariz. 422, 425, 678 P.2d 1386, 1389 (1984). “Clearly exculpatory evidence is
2 evidence of such weight that it might deter the grand jury from finding the
3 existence of probable cause” *Trebus v. Davis*, 189 Ariz. 621, 944 P.2d 1235,
4 1239 (1997) [citing *State v. Coconino County, supra*]. The State has the
5 obligation to make a meaningful presentation of clearly exculpatory evidence
6 made known to the State. *Trebus, supra; Herrell v Sargeant*, 189 Ariz. 627, 944
7 P.2d 1241, 1243 (1997) [“on proper request, the prosecutor is obliged to inform
8 the grand jury of any exculpatory matters, thus enabling the jury to make an
9 informed decision under A.R.S. § 21-412”] In the present case, the State clearly
10 violated its duty to make a meaningful presentation of exculpatory evidence. The
11 State’s failure to meet this obligation entitles Mr. Jeffs to a remand

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16 I. The State presented false information that Leonard Barlow and
17 were first cousins and this false information was
18 obviously essential to the grand jury’s decision to indict on the
incest counts.

19 Before the grand jury, Detective Engels repeatedly testified falsely that
20 and Leonard Barlow “were first cousins.” [Grand Jury Transcript,
21 pp. 32, 46-47]. In fact, and Leonard Barlow are first cousins of the half
22 blood, and Arizona law recognizes that distinction as explained in defendant Jeffs’
23 motion to dismiss counts 2 and 4 of his indictment, which is incorporated herein
24 by reference. This distinction is critical. The Arizona legislature has made its
25 policy decision by declaring that marriages between first cousins of the full blood
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1 are prohibited, but marriages between other cousins are not. The State was no
2 doubt aware of this distinction and the State was well aware that Leonard Barlow
3 and [REDACTED] were not full first cousins.¹ The State was obligated to present
4 this factual information, together with accurate instructions on the law, so that the
5 jury could determine whether the facts fit the definition of the crime. Instead, the
6 State elected to present false information on the matter to remove the question
7 completely from the grand jury's consideration.
8
9

10 The prosecutor had previously instructed the grand jury that marriages
11 between first cousins were prohibited under Arizona law and that sexual conduct
12 between those individuals would therefore violate Arizona's incest statute. [Grand
13 Jury Transcript, June 21, 2007, p. 9]. While these instructions were true, they
14 were highly misleading because the case does not involve first cousins. As noted
15 above, a defendant cannot be indicted "with the use of misleading testimony,"
16 *Roylston, supra*, and cannot be "tried on an indictment based on erroneous
17 testimony." *Escobar, supra*. A defendant is entitled to remand whenever
18 "evidence, whether intentionally or unintentionally false, has been presented to the
19 trier of fact and is used as a basis for finding probable cause." *Roylston, supra*
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25 ¹ Leonard Barlow and [REDACTED] share a common grandfather, John Y. Barlow, but they
26 do not share a common grandmother. [REDACTED] grandmother is Esther Johnson and
27 Leonard Barlow's grandmother is Martha Jessop. Leonard Barlow and [REDACTED] are
28 therefore not first cousins, but rather first cousins of the one-half blood.

1 Accordingly, in addition to all the reasons for dismissal of counts 2 and 4 set forth
2 in Mr. Jeffs' motions to dismiss, those counts must also be dismissed due to the
3 presentation of this false information to the grand jury.
4

5 2. The State failed to present clearly exculpatory evidence that
6 _____ made patently unbelievable statements in
7 connection with the charges in this matter.

8 In the grand jury presentation, the State went into great detail about
9 meetings that purportedly occurred between _____ Leonard Barlow, and
10 Warren Jeffs, in an office at the home of Rulon Jeffs. [Grand Jury Transcript,
11 June 21, 2007, pp. 41-44]. The State even went so far as to present evidence that
12 _____ claimed that, at one of these meetings, Mr. Jeffs wanted her and
13 Leonard to have sex right then and there. [*Id.*, p. 44].
14

15
16 However, the State conveniently neglected to inform the grand jury of _____
17 _____ statements about what happened next, i.e., her claim that she opened a
18 window, cut the screen, climbed out, threw a rock through Warren Jeffs' office
19 window, jumped a fence, and hid out in the woods for three days. At the time of
20 the grand jury presentation on June 21, 2007, the State was no doubt aware that
21 _____ made these claims in her interview of April 4, 2007, and separately in
22 her interview with the prosecutor and Mr. Engels on May 3, 2007 [See State's
23 Disclosure, pp. 752-753, 821]. The State also knew that law enforcement officials
24 had taken photos of the location which indicate that the windows are
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1 approximately 15 to 20 feet above the surface below. [State's Disclosure, p. 754].

2 The State, therefore, knew that — had made patently unbelievable
3 statements that were inextricably intertwined with, and clearly undermined the
4 credibility of, her accusations in the present case. Apart from a prosecutor's duty
5 to present exculpatory evidence to the grand jury, a prosecutor in an *ex parte*
6 proceeding has the ethical obligation to present known adverse facts:
7

9 In an *ex parte* proceeding, a lawyer shall inform the tribunal of all
10 material facts known to the lawyer which will enable the tribunal to
11 make an informed decision, whether or not the facts are adverse.

12 Rule 42, Rules of the Arizona Supreme Court, ER 3.3(d) [emphasis added]

13 Because the State chose to present evidence of this alleged event to the
14 grand jury, it was obligated to present the adverse facts so that the grand jury
15 could determine for itself whether the incident ever occurred. The State's failure
16 to present these known adverse facts further entitles Mr. Jeffs to a remand.
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18 *Coconino County, supra.*

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20 D. The Prosecutor Improperly Influenced The Grand Jury Through
21 Repeated Prejudicial References To Religious Practices And Beliefs
22 As Purported Evidence Of Criminal Guilt.

23 The grand jury transcript is riddled with discussions of, and references to,
24 the practices and beliefs of the FLDS church and its prophets Mr. Rulon Jeffs and
25 the defendant, Mr. Warren Jeffs. The grand jury was told that the word of God is
26 revealed to the prophet and the prophet then instructs the congregation. The grand
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1 jury was then informed, essentially, that everyone has to follow the practices of the
2 church or else they won't be admitted to heaven, and therefore no one has any
3 freedom of choice and/or responsibility for his or her own conduct² These
4 religious themes are central to the State's theory of criminal responsibility
5

6 After all, Mr. Jeffs is not accused of engaging in any improper sexual
7 activity with anyone in the present case. He is charged as an "accomplice" strictly
8 because of his position in the church and his conduct in that role. Mr. Jeffs
9 assisted his father, Rulon Jeffs, in performing a marriage ceremony between
10 _____ and Leonard Barlow that took place with the consent of _____ father and
11 _____ and the consent of all concerned parties. After the marriage, Warren Jeffs counseled
12 the couple, in accordance with FLDS religious teachings, that married couples
13 should have children. Accordingly, the State's theory is based entirely upon
14 conduct that Mr. Jeffs engaged in in his capacity as the leader of the church.
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18 The defendant is aware that, in certain cases, references to religious
19 practices and beliefs are admissible without running afoul of any constitutional or
20 evidentiary prohibitions. However, the defendant submits that, in the present case,
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23 ² Indeed, the prosecutor, ostensibly asking a question of Mr. Engels, elicited that
24 _____ mother did not "dare speak up" and oppose her daughter's marriage because she
25 would be excommunicated from the church and lose all contact with her family. [Grand Jury
26 Transcript, June 21, 2007, p. 39]. This is precisely the type of factual exhortation that
27 prosecutors are forbidden to engage in before the grand jury. "[E]xhortations and factual
28 interpretations by the prosecutor are improper." *State v. Hocker*, 113 Ariz. at 454, 556 P.2d
at 788 [citing *State v. Good*, *supra*]

1 it is highly improper to base the entire theory of criminal liability solely upon acts
2 unmistakably performed in a religious capacity. Moreover, the concept that
3 members of religion are expected to follow the teachings of the leader of the
4 church is hardly unique to the FLDS. The “mainstream” LDS also believes that
5 the word of God is revealed to the prophet of their church and they are to follow
6 his teachings. It is also a feature of mainstream Catholicism that the Pope is the
7 Vicar of Christ, that Catholics are supposed to follow his teachings, and that his
8 pronouncements on religious subjects are infallible. The corollary to all these
9 precepts is that those who do not obey these teachings will be ostracized from the
10 religious community and will not be admitted to heaven. Presumably the State
11 would not present evidence of the beliefs and practices of the Catholic religion,
12 “mainstream” Mormonism, or any other “accepted” religion in order to prove
13 criminal liability

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18 The point is that, in the grand jury presentation, the beliefs and practices of
19 the FLDS were not afforded the respect to which all religious beliefs are entitled,
20 especially because the key aspect behind the State’s theory – that members of the
21 church have to follow the instructions of the leader – is shared by many other
22 religions. Under these circumstances, the State’s repeated discussions of the
23 beliefs and practices of the FLDS infected the grand jury presentation, and denied
24 Mr. Jeffs his right to a fair and impartial grand jury
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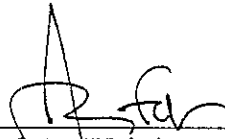
III. CONCLUSION

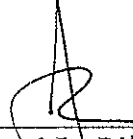
The prosecutor failed to conduct any meaningful inquiry into whether the grand jurors were biased against Mr. Jeffs because of the vast amount of prejudicial media publicity. The prosecutor failed to instruct the grand jury on the key statutory definition in the case that it was to decide. The State presented inaccurate information, failed to present clearly exculpatory information, and improperly influenced the grand jury. Accordingly, Mr. Jeffs is entitled to a remand.

RESPECTFULLY SUBMITTED this 13th day of May, 2008.

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