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18 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

19 IN AND FOR THE COUNTY OF MOHAVE

20 STATE OF ARIZONA,) NO. CR-2007-953
21)
22)
23 Plaintiff,)
24 vs.) REPLY TO RESPONSE TO
25) MOTION FOR DEPOSITION
26) OF WITNESS SAM BROWER
27)
28)
29 WARREN STEED JEFFS,)
30)
31)
32 Defendant.) [Hon. Steven F. Conn]
33)
34)

35 The defendant, Warren Jeffs, by and through counsel undersigned, hereby
36 replies to the State's Response to his Motion for Deposition of Witness Sam
37 Brower.

38 At the outset, the defendant does not understand how the State has standing
39 to oppose the defendant's motion. Sam Brower is not an employee of the State, he

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1 is not represented by the State, and he is not a victim. It would seem an odd
2 proposition that one party can dictate to the other party the identity of individuals
3 who can or cannot be interviewed in the course of investigating a case.¹ Perhaps
4 the State's intervention on Mr. Brower's behalf is an acknowledgement of the
5 efforts Mr. Brower has undertaken (although not a State employee) on behalf of
6 the State in the civil and criminal cases against the defendant.
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9 For the same reasons, the State does not have standing to assert the
10 attorney-client privilege vicariously for the Hoole law firm. In any event, the
11 attempted assertion of the attorney-client and/or work product privilege on behalf
12 of the law firm of Roger and Greg Hoole fails for multiple reasons. First, Roger
13 Hoole has already been interviewed without issues of privilege preventing the
14 interview. Second, Mr. Brower's willingness to repeatedly make extensive public
15 statements about Mr. Jeffs and the civil and criminal cases against him waives any
16 such claim of privilege as to the areas of public comment. Finally, to the limited
17 extent that there can be any legitimate assertions of privilege at this point, the
18 proper procedure is to raise any such claims during the interview or deposition and
19 obtain a ruling from the court later, rather than prohibiting the interview or
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24 ¹ Cf. *United States v. Nachamie*, 91 F.Supp.2d 552, 561 (S.D.N.Y. 2000) [government lacks
25 standing to challenge subpoenas issued to third parties]. "Ordinarily a party has no standing to
26 seek to quash a subpoena issued to someone who is not a party to the action, unless the objecting
27 party claims some personal right or privilege with regard to the documents sought." 9A C.
28 Wright & A. Miller, *Federal Practice and Procedure: Civil 3d* § 2459, p. 435 (2008) (emphasis
added).

1 deposition from taking place at all.

2 Under Rule 15.3 of the Arizona Rules of Criminal Procedure, it is up to the
3 Court, not the opposing party, to determine whether the party requesting a
4 deposition “shows that the person’s testimony is material to the case or necessary
5 adequately to prepare a defense or investigate the offense...and that the person
6 will not cooperate in granting a personal interview...”² The defendant has
7 easily made this showing.

10 Mr. Brower’s role in the civil and criminal prosecutions of the defendant is
11 perhaps most accurately summarized by author Stephen Singular who has stated
12 that “Private investigator Sam Brower was instrumental in the criminal and civil
13 prosecution of Warren Jeffs and in the hunt for him when he was a fugitive.” S.
14 Singular, *When Men Become Gods*, accompanying photo following p. 246 (2008).

17 The author further notes that:

18 By mid-2004, the State of Arizona, Mohave County, the State of
19 Utah, two Attorney General’s offices, and other law enforcement
20 entities were all starting to weigh their options regarding Jeffs, his
21 church, the UEP Trust, and FLDS followers. Brower would soon
22 become the man in the middle of everything – the go-between in an
23 investigative web growing larger and more complex by the week. He
24 searched for Jeffs, shared information with various police agencies,
25 talked to attorneys, communicated with the FBI, and began gathering
26 stories from those harmed by the Prophet or his congregation.

26 ² Cf. *United States v. Tomison*, 969 F.Supp. 587, 594 (E.D. Cal. 1997) [“it is the responsibility of
27 the court, not the opposing party, to ensure that a subpoena secured under Rule 17(c) is for a
28 proper purpose”].

1 *Id.* at 128 [emphasis added]. The author also adds Mr. Brower “hooked up with a
2 pair of Salt Lake City brothers and attorneys, Gregory and Roger Hoole” who
3 filed a civil lawsuit against Jeffs, UEP, and FLDS and notes that the “attorneys’
4 fees would be paid by ex-FLDS member Dan Fischer, who’d created the Diversity
5 Foundation...” *Id.* As noted in defendant’s motion to depose Mr. Brower, the
6 Diversity Foundation has been instrumental in recruiting former members of the
7 FLDS to sue the church and Warren Jeffs and has provided benefits to witnesses
8 in these civil and criminal proceedings. In fact, Mr. Brower has been the personal
9 recipient of hundreds of thousands of dollars³ for his services in connection with
10 the civil and criminal prosecutions of the defendant and the FLDS. Mr. Brower’s
11 deposition is therefore necessary because the defendant is investigating the extent
12 to which Dan Fischer and the Diversity Foundation have been bankrolling these
13 civil and criminal prosecutions against the defendant and providing benefits to the
14 defendant’s accusers. The fact that some of this information has been disclosed
15 during the questioning of other witness does not mean that Mr. Brower is immune
16 from being personally questioned on the subject, nor does it mean that he is
17 immune from being questioned on other factual matters unrelated to these benefits.
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24 In addition to all of these reasons, Mr. Brower’s deposition is necessary for
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26 ³ Mr. Brower has received approximately \$362,089.00 from Diversity which is primarily
27 funded by Dan Fischer or his business.
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1 the defendant's investigation of the case because he also had conversations with
2 Flora Jessop during the execution of the search warrants at the FLDS property in
3 Texas, which is the subject of defendant's motion to suppress evidence obtained in
4 unlawful searches of FLDS property.
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6 In sum, Mr. Brower is the "man in the middle" of all of the efforts by
7 various law enforcement agencies and private individuals and entities who have
8 mounted and continue to mount civil and criminal prosecutions against the
9 defendant, Mr. Brower has received large sums of money in connection with these
10 efforts, and he has not hesitated to make his views on these factual matters known
11 to anyone in the media willing to listen. As noted in defendant's motion, he is
12 apparently willing to speak publicly or privately about Mr. Jeffs to anyone with a
13 camera or pen, except now to Mr. Jeffs' representatives.
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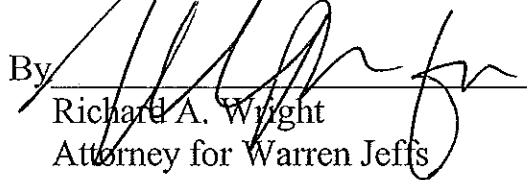
17 For the foregoing reasons, the State's response to defendant's motion to
18 depose Mr. Brower is without merit because the State lacks standing and because
19 the defendant has clearly made the requisite showing to the court to entitle him to
20 depose Mr. Brower pursuant to Rule 15.3 of the Arizona Rules of Criminal
21 Procedure as soon as possible.
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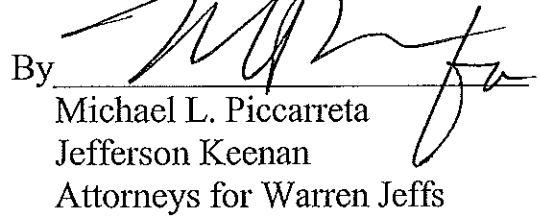
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RESPECTFULLY SUBMITTED this 10th day of February, 2009.

WRIGHT STANISH & WINCKLER

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By 
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