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15 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
 16  
 17 IN AND FOR THE COUNTY OF MOHAVE

18	STATE OF ARIZONA,	)	NO. CR-2007-743
19		)	
20	Plaintiff,	)	MOTION FOR DEPOSITION
21	vs.	)	OF WITNESSES SAM BROWER
22		)	AND DAN FISCHER
23	WARREN STEED JEFFS,	)	
24		)	
25	Defendant.	)	[Oral Argument Requested]
26		)	[Hon. Steven F. Conn]

25 The defendant, Warren Jeffs, by and through his counsel undersigned,  
 26 hereby respectfully requests this Court, pursuant to Rule 15.3 of the Arizona Rules  
 27 of Criminal Procedure, to issue its order once again directing witness Sam Brower  
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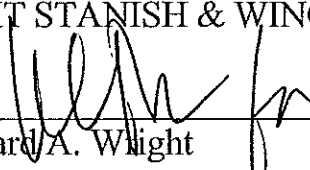
1 to be deposed under oath at a date and time of defendant's choosing, and also to  
2 order the deposition of witness Dr. Dan Fischer. This motion is based on the legal  
3 reasoning and authorities set forth in the attached Memorandum of Points and  
4 Authorities.  
5

6 RESPECTFULLY SUBMITTED this 19th day of August, 2009.

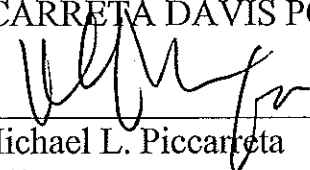
7  
8 WRIGHT STANISH & WINCKLER

PICCARRETA DAVIS PC

9 By

  
Richard A. Wright  
Attorney for Warren Jeffs

By

  
Michael L. Piccarreta  
Jefferson Keenan  
Attorneys for Warren Jeffs

11  
12 MEMORANDUM OF POINTS AND AUTHORITIES

13  
14 Prefatory Note

15 Dan Fischer and Sam Brower are joined at the hip. Dan Fischer is licensed  
16 dentist and former member of the Fundamentalist Church of Jesus Christ of Latter  
17 Day Saints (FLDS). Dan Fischer has arranged for the payment to Brower of over  
18 one half million dollars to wage his campaign against Mr. Jeffs and the FLDS. Dr.  
19 Fischer has also arranged for the payment of over a million dollars to a law firm  
20 representing both accusers in these criminal cases. Dr. Fischer has further  
21 arranged for the payment of money to ex-FLDS members Carolyn Jessop and  
22 Richard Holm who are listed as State expert witnesses. This money has been  
23 funneled through a non-profit tax exempt entity, Diversity Foundation, thus  
24 allowing Dr. Fischer's company, Ultradent Products, a sizeable tax deduction  
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1 saving him and the company hundreds of thousands of dollars (if not a million or  
2 more) in state and federal taxes. In this manner, he has indirectly used public  
3 money to fund his battles. He has claimed the attorney-client privilege in refusing  
4 to discuss communications with Brower, Roger Hoole and other potential  
5 witnesses. Similarly, Mr. Brower has asserted the attorney-client privilege to  
6 decline to discuss communications with Dr. Fischer and other potential witnesses.  
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8  
9 A man who is so actively involved in financially supporting litigation and  
10 providing financial benefits to state witnesses in large amounts cannot hide behind  
11 the attorney client privilege, especially when the attorney does not represent him,  
12 his company, or his non-profit entity. All relevant communications, written and  
13 oral, must be disclosed. These witnesses are critical to Mr. Jeffs' defense and  
14 necessary to place the criminal case in proper context. A failure to permit the  
15 defendant to discover these communications and fully air the relationship between  
16 the money benefactor and the State's witnesses would deny Mr. Jeffs his state and  
17 federal constitutional rights to confront his accusers and prepare his defense.  
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## 21 I. STATEMENT OF FACTS

22 Over the State's objection, this Court previously ordered the deposition of  
23 Mr. Sam Brower, a material witness in the present case. See Court Order,  
24 February 13, 2009. The defendant, Warren Jeffs, is now renewing his request to  
25 depose Mr. Brower, and is also asking this Court to order the deposition of Dr.  
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1 Fischer. Mr. Brower's deposition was originally ordered to take place on April 15,  
2 2009, in Las Vegas, Nevada. At Mr. Brower's request, and at considerable  
3 expense to the parties, it was agreed that Mr. Brower's deposition would take  
4 place in Cedar City, Utah, where Mr. Brower resides, on May 20, 2009. The  
5 parties agreed to Mr. Brower's request that, rather than submit to the Court-  
6 ordered deposition, he submit to a pre-trial interview transcribed by a court  
7 reporter on the date set for Mr. Brower's deposition, and that interview did,  
8 indeed, take place. Dr. Fischer voluntarily and cooperatively submitted to a pre-  
9 trial interview on March 18, 2009, in Salt Lake City that was also transcribed by a  
10 court reporter (copies will be provided to the Court under separate cover).

14 During the pretrial interviews of both Dr. Fischer and Mr. Brower, each  
15 witness refused to answer questions in many areas relating directly to the present  
16 case against Mr. Jeffs. Specifically, both Dr. Fischer and Mr. Brower repeatedly  
17 refused to answer questions on the basis of what the defendant asserts are bogus  
18 claims of the "attorney-client" privilege.<sup>1</sup> In so doing, both Dr. Fischer and Mr.  
19 Brower are attempting to withhold evidence directly related to Mr. Jeffs' defense,  
20 i.e. that both Dr. Fischer and Mr. Brower have been extensively engaged in  
21 systematic efforts to harm Mr. Jeffs and the Fundamentalist Church of Jesus Christ  
22 of Latter Day Saints (FLDS) through, among other means, civil lawsuits and  
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1 aiding criminal prosecutions funded by the Diversity Foundation, a tax exempt  
2 501(c)(3) corporation founded (and funded) by Dr. Fischer and his business. This  
3 entity also funded payments and loans to various state witnesses and others who  
4 wished to sue Mr. Jeffs and/or the FLDS. Dr. Fischer and the Diversity  
5 Foundation has been instrumental in recruiting former members of the FLDS to  
6 sue the church and Warren Jeffs, and in referring them to the law firm of Hoole &  
7 King. The Diversity Foundation has provided benefits to witnesses in these  
8 matters, notably including \_\_\_\_\_ and \_\_\_\_\_ the complaining  
9 witnesses in the present criminal prosecutions.<sup>2</sup>

13 Mr. Brower's role in the civil and criminal prosecutions of the defendant is  
14 perhaps most accurately summarized by author Stephen Singular who has stated  
15 that "Private investigator Sam Brower was instrumental in the criminal and civil  
16 prosecution of Warren Jeffs and in the hunt for him when he was a fugitive." S.  
17 Singular, *When Men Become Gods*, accompanying photo following p. 246 (2008).  
18

19 The author further notes that:

21 By mid-2004, the State of Arizona, Mohave County, the State of  
22 Utah, two Attorney General's offices, and other law enforcement  
23 entities were all starting to weigh their options regarding Jeffs, his  
24 church, the UEP Trust, and FLDS followers. Brower would soon

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25 <sup>1</sup> In addition, Mr. Brower inexplicably refused to answer questions about his cooperation and  
26 communications with federal authorities and other third parties regarding Mr. Jeffs.

27 <sup>2</sup> The Diversity Foundation has also provided assistance to numerous other adversaries of the  
28 FLDS, including Richard Holm and Carolyn Jessop, so-called "expert" witnesses for the  
State, and other state witnesses.

1           become the man in the middle of everything – the go-between in an  
2           investigative web growing larger and more complex by the week. He  
3           searched for Jeffs, shared information with various police agencies,  
4           talked to attorneys, communicated with the FBI, and began gathering  
5           stories from those harmed by the Prophet or his congregation.

6           *Id.* at 128 [emphasis added]. The author also adds Mr. Brower “hooked up with a  
7           pair of Salt Lake City brothers and attorneys, Gregory and Roger Hoole” who  
8           filed a civil lawsuit against Jeffs, UEP, and FLDS and notes that the “attorneys’  
9           fees would be paid by ex-FLDS member Dan Fischer, who’d created the Diversity  
10          Foundation...” *Id.*

11                           In fact, Mr. Brower has been the personal recipient of over half a million  
12           dollars for his services in connection with the civil and criminal prosecutions of  
13           the defendant and the FLDS.<sup>3</sup> Roger Hoole’s law firm, for its part, has been the  
14           recipient of over \$1.7 million dollars<sup>4</sup> from the Diversity Foundation for its efforts  
15           in these proceedings primarily on behalf of the State’s key witness,  
16           The defendant further asserts that the Diversity Foundation is primarily a tax  
17           avoidance scheme intended to funnel dollars without paying taxes on them from  
18           Dr. Fischer’s businesses<sup>5</sup> and Dr. Fischer to Mr. Brower and the Hoole law firm as

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24           <sup>3</sup> Mr. Brower received at least \$121,556 in 2005, \$86,216 in 2006, \$154,317 in 2007,  
25           \$130,032 in 2008 and \$33,706 in 2009 totaling \$525,827.

26           <sup>4</sup> His law firm received at least \$83,882 in 2004, \$388,647 in 2005, \$310,723 in 2006,  
27           \$384,855 in 2007, \$444,999 in 2008 and \$93,343 in 2009 totaling \$1,706,449.

28           <sup>5</sup> Dr. Fischer’s business, Ultradent, provides approximately 90 percent of the contributions to  
          the Diversity Foundation and receives a tax deduction for those contributions.

1 part of a concerted effort to harm Mr. Jeffs and the FLDS. The depositions of Mr.  
2 Brower and Dr. Fischer are therefore necessary because the defendant is  
3 investigating the extent to which Dr. Fischer and the Diversity Foundation have  
4 been bankrolling the civil and aiding the criminal prosecutions against the  
5 defendant and providing benefits to the defendant's accusers and state witnesses.  
6 Both Mr. Brower and Dr. Fischer have refused to fully answer questions in these  
7 areas. Indeed, Mr. Roger Hoole was present during both interviews and  
8 repeatedly advised Mr. Brower and Dr. Fischer not to answer numerous questions  
9 on the basis of various spurious claims of privilege.<sup>6</sup> It must be noted that neither  
10 Diversity nor Dr. Fischer are clients of the Hoole law firm.

14 Specifically, defense counsel attempted to inquire into the extent to which  
15 these efforts to harm Mr. Jeffs have been orchestrated by Dr. Fischer and/or Mr.  
16 Brower. During Dr. Fischer's interview, Mr. Roger Hoole instructed Dr. Fischer  
17 not to answer any questions about any communications with Mr. Brower or any  
18 members, representatives, or clients of the Hoole law firm. [Interview of Dan  
19 Fischer, March 18, 2009, p. 28]. Undersigned counsel explained his opposition to  
20 those assertions of privilege:  
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24 Mr. Piccarreta: Right, but I don't represent the FLDS so I can't  
25 speak for them. I represent Warren Jeffs in this  
26 case. I'm trying to get information regarding

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27 <sup>6</sup> To make matters more interesting, Mr. Hoole is a potential witness on behalf of the defense  
28 in the Arizona prosecutions.

1 communication between Dr. Fischer and the  
2 accusers in the case, Dr. Fischer and the lawyer  
3 for the accusers in the case that involve benefits  
4 that were given by Dr. Fischer to them and –

5 I'm interested in the communications. And the  
6 law is very clear on third party payees do not  
7 have privileges with the lawyers that they hired  
8 who represent others. So, we're going to –

9 Mr. Barach: You mean payors?

10 Mr. Piccarreta: Payors. And third party payees –

11 [Id., pp. 34-5]. Thereafter, Roger Hoole immediately instructed Dr. Fischer not to  
12 answer questions about any of his conversations on behalf of Diversity with the  
13 chief accuser \_\_\_\_\_, and her husband \_\_\_\_\_, the largest  
14 beneficiaries of Dr. Fischer's largess. [Id., pp. 35-36]. Dr. Fischer has also  
15 declined to provide testimony regarding communications with other state  
16 witnesses and the defendant has been unable to obtain any writings or oral  
17 communications between these other individuals and Dr. Fischer and/or the  
18 Diversity Foundation.  
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21 During Mr. Brower's interview, Mr. Roger Hoole also interposed  
22 objections about any communications with Dr. Fischer, with any clients of the  
23 Hoole law firm, and about any work that Mr. Brower had done for the Hoole law  
24 firm representing those clients:  
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26 Mr. Hoole: That's correct. Let me be clear. The privilege  
27 challenge I'm asserting today is attorney-client  
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and work product privileges.

Mr. Piccarreta: For your law firm and the cases you've handled?

Mr. Hoole: That's right. To the extent that Mr. Brower has done work for us.

Mr. Piccarreta: At least from your view is if I asked the same questions regarding Diversity or his representatives, your position is the same?

Mr. Hoole: Our position is the same because Dan Fischer, who is associated with Diversity, is an expert, a testifying expert for us, and also he and Diversity are client representatives under our rules of evidence in Utah, Rule 504(a)(4).

[Interview of Sam Brower, May 20, 2009, p. 30]. Mr. Brower further asserted claims of privilege based on the erroneous belief that his conversations with any third parties in the course of his investigations were privileged. [*Id.*, pp. 132-34].

In fact, Mr. Brower's efforts have not been confined solely to pending civil and criminal litigation. Mr. Brower has performed a significant amount of investigative work accompanying Mohave County investigator Gary Engels, Utah law enforcement, federal law enforcement, media, elected officials and others engaged in the general persecution/harassment of the FLDS and its members, apart from any investigative work connected to any litigation. This general work is also funded by the Diversity Foundation which accounts for the overwhelming

1 majority of Brower's income over the last five years.<sup>7</sup>

2 In addition, upon information and belief, it appears that Mr. Brower  
3 provided answers during his pre-trial interview that were intentionally false and  
4 that directly relate to his credibility. Accordingly, another reason for ordering Mr.  
5 Brower's deposition is to further the truth finding process by requiring Mr. Brower  
6 to be deposed under the penalty of perjury (which perhaps explains his insistence  
7 on an initial interview rather than a deposition). Undersigned counsel asserts a  
8 good faith basis for the contention that Mr. Brower was less than candid in his  
9 answers during the pre-trial interview, and his deposition under oath will permit  
10 any inaccuracies (intentional or otherwise) to be corrected in preparation for the  
11 upcoming trial.<sup>8</sup>

## 12 II. DISCUSSION

13 This Court Should Order The Depositions Of Dr. Dan Fischer And Mr.  
14 Sam Brower Because They Will Not Cooperate In Answering Questions In  
15 Key Areas That Are Material To The Defense And They Have No Valid  
16 Claim Of Privilege.

17 Rule 15.3(a)(2) of the Arizona Rules of Criminal Procedure authorizes the  
18 court to order the deposition of any person whose "testimony is material to the  
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24 <sup>7</sup> Dr. Fischer has indicated and Brower confirmed that Brower is no longer being paid by  
25 Diversity for his work.

26 <sup>8</sup> If necessary, undersigned counsel is willing to provide the particular details supporting his  
27 good faith basis for these assertions to the Court *ex parte*, under seal, for *in camera*  
28 inspection.

1 case or necessary adequately to prepare a defense or to investigate the offense”  
2 when “the person will not cooperate in granting a personal interview.” Obviously,  
3 a witness who refuses to answer questions is one who “will not cooperate” for the  
4 purposes of Rule 15.3. *Cf. Kirkendall v. Fisher*, 27 Ariz. App. 210, 212, 553 P.2d  
5 243, 245 (1976) [noting that failure to cooperate under the rule does not have to  
6 rise to the level of outright refusal to answer questions]. In the present case, Mr.  
7 Brower’s and Dr. Fischer’s refusal to answer based on purported assertions of  
8 privilege constitutes a failure to cooperate because those purported assertions of  
9 privilege are invalid.

13 “Evidentiary privileges are narrowly construed because they operate to  
14 deprive the fact finder of information that is relevant to the issues before it and  
15 may, in that fashion, impede the search for the truth.” J. Livermore, *et al.*, *Arizona*  
16 *Law of Evidence*, § 501:2, p. 192 (Revised Fourth Edition 2008). Accordingly,  
17 “[p]rivileges are to be strictly construed and the burden of sustaining the existence  
18 and applicability of the privilege is on the person claiming it.” *Id.* at 191 [citing  
19 *Throop v. F.E. Young & Co.*, 94 Ariz. 146, 382 P.2d 560 (1963)].

22 a. Dan Fischer

23  
24 As noted above, Dr. Fischer is neither an attorney nor client in any relevant  
25 proceedings. Accordingly, the attorney-client privilege simply does not apply to  
26 him or any of his communications with Mr. Brower, the Hoole law firm, other  
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1 state witnesses, and other individuals. Quite simply, “the privilege does not  
2 protect information learned by the lawyer from third parties,” *id.*, § 501:5, p. 204,  
3 and therefore does not “apply to information or facts acquired by the attorney or  
4 the attorney’s agents from non-client sources.” *Granger v. Wisner*, 134 Ariz. 377,  
5 380, 656 P.2d 1238, 1241 (1982).  
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8 Roger Hoole was present for Dr. Fischer’s pre-trial interview and tried to  
9 assert that Dr. Fischer was a “client representative” of \_\_\_\_\_ or  
10 (or both) under Rule 504(a)(4) of the Utah Rules of Evidence. However, in the  
11 context of an individual client, this privilege simply does not exist under Arizona  
12 law. Like the United States Supreme Court, the Arizona Supreme Court has  
13 rejected codification of privileges such as Rule 504(a)(4) of the Utah Rules of  
14 Evidence and Arizona simply has no counterpart to this particular rule. It does not  
15 appear that the privilege exists in Arizona under rule, statute, or decisional law.  
16 Because even existing privileges are narrowly construed, a non-existent privilege  
17 doesn’t stand a chance. In addition, as noted above, Dr. Fischer is an active  
18 participant in, and percipient witness to, efforts to harm Mr. Jeffs and the FLDS.  
19 There is no privilege that applies. “[T]he common law did not suppose that one  
20 could cast the privilege over communications from a witness to the attorney by the  
21 simply expedient of appointing the witness as the agent of the client.” 24 C.  
22 Wright & K. Graham, *Federal Practice and Procedure, Evidence* § 5483 (2009).  
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1           At Dr. Fischer's pre-trial interview, Roger Hoole also tried to assert that Dr.  
2 Fischer was some sort of "expert." However, Dr. Fischer, himself, stated that he  
3 has not performed any such services as an expert with regard to either of the  
4 complaining witnesses in these proceedings. [Fischer interview, March 18, 2009,  
5 p. 43]. Once again, due to Dr. Fischer's active efforts to fund litigation against  
6 and fund investigations of the FLDS, he cannot simultaneously try to claim the  
7 label "expert." He is the referral source and funding source regarding the civil  
8 cases and a financial supporter of the accusers in the criminal cases and a financial  
9 supporter of additional State witnesses.  
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13           Moreover, given Dr. Fischer's role in funneling money to Mr. Brower and  
14 the Hoole law firm in part on behalf of state's witnesses, there can be no valid  
15 claim of privilege. "The attorney-client relationship is not genuine where its only  
16 purpose is to gain confidentiality for the client or to use the lawyer as a mere  
17 conduit for the payment of money." *In Re Grand Jury Subpoenas*, 803 F.2d 493,  
18 499 (9th Cir. 1986). In addition, a third-party fee payer cannot be considered the  
19 client in the matter for which the fee was paid. *Id.*  
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22           Simply put, an individual who is funding adversaries, lawsuits, and  
23 investigations of another person cannot make himself immune from questioning  
24 regarding his activities by simply claiming to be a client representative or expert.  
25 By way of analogy, one would not suppose that a mob boss or drug kingpin who  
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1 pays for legal services for people acting on his behalf would have much success in  
2 refusing to answer questions by claiming to be an “expert” or “client  
3 representative.”  
4

5 Finally, even if there were some form of valid claim of the attorney-client  
6 privilege with regard to Dr. Fischer, which there is not, the privilege would “not  
7 apply to communications which are made in furtherance of a crime or fraud.” J.  
8 Livermore, *et al.*, *supra* at § 501:5, p. 206. As stated by Justice Cardozo:

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10 The privilege takes flight if the relation is abused. A client who  
11 consults an attorney for advice that will serve him the commission of  
12 a fraud will have no help from the law. He must let the truth be told.

13 *Clark v. United States*, 289 U.S. 1, 15 (1933) [quoted in *Buell v. Superior Court*,  
14 96 Ariz. 62, 68, 391 P.2d 919, 924 (1964)]. See generally, *State Farm Mutual*  
15 *Automobile Ins. Co. v. Lee*, 199 Ariz. 52, 58, 13 P.3d 1169, 1175 (2000) [“In  
16 previous opinions, our courts have found reliance on a privilege unfair when used  
17 as both a sword and a shield”].  
18

19  
20 The defendant submits that the Diversity Foundation is not a legitimate tax-  
21 exempt charity inasmuch as the foundation was created primarily to funnel  
22 millions of dollars from Dr. Fischer’s business to Mr. Brower and the Hoole law  
23 firm in an organized effort to harm Mr. Jeffs and the FLDS and to deprive Mr.  
24 Jeffs of his civil rights. The Diversity Foundation is ostensibly a tax exempt  
25 501(c)(3) organization under the federal tax code. However, the Foundation’s  
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1 records indicate that only a small percentage of the Foundation's efforts actually  
2 relates to its stated purpose of promoting multicultural awareness, respect,  
3 appreciation, and tolerance, while ironically most of his expenditures diverge from  
4 these purported goals.<sup>9</sup> The defendant submits that the Diversity Foundation  
5 really performs the function of furthering Dr. Dan Fischer's personal goals of  
6 litigation against Mr. Jeffs and the FLDS – the church Dr. Fischer left after his  
7 disagreements with Warren Jeffs and his father, Rulon Jeffs. These concerted  
8 efforts are obviously a far cry from the Diversity Foundation's stated purpose of  
9 promoting, among other things, religious tolerance.  
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13 Reports show that Dr. Fischer's business, Ultradent Products, has donated  
14 to the Diversity Foundation \$3,184,496.00 for the years 2005 through 2009. The  
15 primary shareholders in Ultradent Products are Dan Fischer and Alena Bateman  
16 Fischer. [Interview of Dan Fischer, March 18, 2009, pp. 20-21]. Assuming  
17 ordinary state and federal corporate tax rates would apply over these years, it  
18 appears that Ultradent would have owed over one million dollars in state and  
19 federal taxes if that money had not been funneled instead to the Diversity  
20 Foundation to further Dr. Fischer's litigation goals and his efforts to harm his  
21 former church and its leader. In short, Dr. Fischer's efforts are being funded, in no  
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26 <sup>9</sup> For example, in 2008, the vast majority of the Foundation's expenses, more than  
27 \$600,000.00, was paid to the Hoole law firm, Mr. Brower, loans to former FLDS members,  
28 and other related expenses.

1 small part, by dollars that should belong in the coffers of the United States and  
2 Utah Treasury. The defendant submits that this is the paradigmatic case in which  
3 the court should find “reliance on a privilege unfair when used as both a sword  
4 and a shield.” *State Farm*, 199 Ariz. at 58, 13 P.3d at 1175.

6 Accordingly, for all of the foregoing reasons, the defendant respectfully  
7 requests this Court to issue its order directing Dr. Fischer to submit to a deposition  
8 pursuant to Rule 15.3 of the Arizona Rules of Criminal Procedure at which he will  
9 be required to answer questions regarding communications with Mr. Brower, Mr.  
10 Hoole, the complaining witnesses, other state witnesses, and any third parties  
11 relating to his and the Diversity Foundation’s funding of investigations of Mr.  
12 Jeffs and members of the FLDS, and the results of those investigations.

15 b. Sam Brower

16 Similarly, for all of the reasons set forth above, the defendant submits that  
17 there is no valid attorney-client privilege for the work done by Mr. Brower and the  
18 Hoole law firm that was funded by the Diversity Foundation. Mr. Brower, like  
19 Dr. Fischer, is an active participant in, and percipient witness to, these efforts to  
20 harm Mr. Warren Jeffs and the FLDS. As with Dr. Fischer, the attorney-client  
21 privilege simply does not “apply to information or facts acquired by the attorney  
22 or the attorney’s agents from non-client sources.” *Granger*, 134 Ariz. at 380, 656  
23 P.2d at 1241. Because Dr. Fischer is not the client, the privilege does not apply to  
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1 any of Mr. Brower's communications with him, or any other non-client sources.  
2 *Id.* As with Dr. Fischer, Mr. Brower should be ordered to submit to a deposition at  
3 which he, too, will be required to answer questions regarding communications  
4 with Dr. Fischer, Mr. Hoole, the complaining witnesses, other state witnesses, and  
5 any third parties relating to Mr. Brower's investigations of Mr. Jeffs and members  
6 of the FLDS, and the results of those investigations.  
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8  
9 For the same reasons, Mr. Brower's claims of alleged work product  
10 immunity must also fail. Because there is no valid claim to attorney-client  
11 privilege under these circumstances, there can be no protected work product. In  
12 addition, under Arizona law, "the work product doctrine protects only written  
13 material prepared in anticipation of litigation." J. Livermore, *et al.*, *supra* at §  
14 501:6, p. 214. The questions put to Mr. Brower at his pre-trial interview were  
15 obviously not requesting him to turn over any written materials he had prepared in  
16 anticipation of litigation.  
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19  
20 As a separate matter, Mr. Brower has personally made his deposition  
21 necessary through his conduct. Mr. Brower's false answers to questions that relate  
22 directly to his credibility now require that he be deposed under penalty of perjury  
23 so that these inaccuracies can be corrected<sup>10</sup> before this matter proceeds to trial. A  
24 witness simply cannot be permitted to abuse the pre-trial interview process in this  
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1 manner.

2 Finally, with respect to both Mr. Brower and Dr. Fischer, the defendant  
3 submits that any claims of privilege must give way to the defendant's  
4 constitutional right to "cross-examination directed toward revealing possible  
5 biases, prejudices, or ulterior motives of the witness as they may relate directly to  
6 issues or personalities in the case at hand." *Davis v. Alaska*, 415 U.S. 308, 316  
7 (1974). As stated in Judge Weinstein's treatise:

10 In criminal cases, the defendant's right to the production of evidence  
11 has constitutional dimensions. Allowing a privilege to withhold  
12 evidence that is demonstrably relevant in a criminal trial would "cut  
13 deeply into the guarantee of due process of the law and gravely  
14 impair the basic function of the courts."

15 3 J. Weinstein & M. Berger, *Weinstein's Federal Evidence*, § 501.03[2][b]  
16 (Second Edition 2008) [footnote omitted]; see also *Chambers v. Mississippi*, 410  
17 U.S. 284 (1973) [confrontation right overrides rules excluding hearsay]. Mr.  
18 Brower is a publically avowed "enemy to Warren Jeffs"<sup>11</sup> and has not hesitated to  
19 discuss all aspects of this case to anyone with a camera, a pen, or some type of  
20 media credentials. It appears the only person that he does not want to discuss  
21 these matters with is counsel defending the case. It is then and only then that his  
22  
23  
24  
25

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26 <sup>10</sup> If, of course, Mr. Brower intentionally gives false statements, he would theoretically face  
27 criminal prosecution by the State of Arizona.

28 <sup>11</sup> Anderson Cooper 360, CNN, May 12, 2006.

1 frivolous claims of privilege rear their head.<sup>12</sup> As noted above, both Dr. Fischer  
2 and Mr. Brower are engaged in a concerted effort to harm Mr. Jeffs and the FLDS.

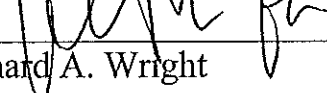
3 Accordingly, any claim of privilege precluding cross examination into these  
4 efforts must be rejected.  
5

6 III. CONCLUSION

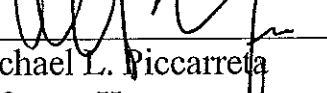
7 For the foregoing reasons, the defendant, Warren Jeffs, by and through his  
8 undersigned attorney, respectfully requests this Court, pursuant to Rule 15.3 of the  
9 Arizona Rules of Criminal Procedure, to order the deposition of Mr. Sam Brower  
10 to take place at a date and time convenient to the defendant, and to further order  
11 the deposition of Dr. Dan Fischer to take place at a date and time convenient to the  
12 parties.  
13

14  
15 RESPECTFULLY SUBMITTED this 10th day of August, 2009.

16  
17 WRIGHT STANISH & WINCKLER

18 By   
19 Richard A. Wright  
20 Attorney for Warren Jeffs

PICCARRETA DAVIS PC

21 By   
22 Michael L. Piccarreta  
23 Jefferson Keenan  
24 Attorneys for Warren Jeffs  
25

26 \_\_\_\_\_  
27 <sup>12</sup> A simple "Google" of Mr. Brower will show the thousands of times his comments about  
28 Mr. Jeffs and the FLDS have appeared publically without any assertion of the attorney-client  
privilege.

1 Original of the foregoing mailed  
2 this 19th day of August, 2009, to:

3 Clerk of Mohave County Superior Court  
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5 Kingman, AZ 86401

6 Hon. Steven F. Conn  
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21 Copy of the foregoing emailed  
22 this 19th day of August, 2009, to:

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28