Sheila Sullivan Polk, SBN 007514
County Attorney
ycao@co.yavapai.az.us

Attorneys for STATE OF ARIZONA

SUPERIOR COURT
YAVAPAI COUNTY, ARIZONA
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IN THE SUPERIOR COURT

STATE OF ARIZONA, COUNTY OF YAVAPAI

STATE OF ARIZONA, Plaintiff, vs. JAMES ARTHUR RAY, Defendant.	V1300CR201080049 **STATE'S RESPONSE TO MOTION TO EXCLUDE AUDIO RECORDINGS OF 2009 SPIRITUAL WARRIOR SEMINAR EVENTS** **(The Honorable Warren Darrow)**

The State of Arizona, through undersigned counsel, respectfully responds to Defendant's Motion to Exclude Audio Recording of 2009 Spiritual Warrior Seminar Events. This Court should deny Defendant's Motion and admit the audio of the Spiritual Warrior 2009 seminar. As explained below, the audio is the best evidence of the events leading up to the sweat lodge ceremony wherein three people died; the events of the week as set forth in the audio are highly relevant to the mental state of the Defendant and his knowledge of his use of techniques to persuade his participants to do things they normally wouldn't do; the events of the week as set forth in the audio state are highly relevant to the mental state of the victims when they entered and remained inside Defendant's sweat lodge; and the audio containing Defendant's comments about facilitating for participants "threshold experiences" and "altered states" is clearly relevant to show the purpose of the Spiritual Warrior 2009 seminar. This Response is supported by the following Memorandum of Points and Authorities.

Office of the Yavapai County Attorney
255 E. Gurley Street
Prescott, AZ 86301
Phone: (928) 771-3344 Facsimile: (928) 771-3110

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255 E. Gurley Street
Prescott, AZ 86301
Phone: (928) 771-3344 Facsimile: (928) 771-3110

MEMORANDUM OF POINTS AND AUTHORITIES

A. The Facts

Forty-nine people, including Kirby Brown and James Shore, paid upwards of $9,000 to Defendant, plus room and board to the retreat center, to participate in Spiritual Warrior 2009. The seminar ran from Saturday evening, October 3, to Friday morning, October 9. Defendant told participants he would teach them the five pillars of success: financial, relationships, mental, spiritual and physical. The theme for the Spiritual Warrior 2009 seminar was to act like Samurai warriors, and Defendant told his participants on the first day to prepare for the ultimate battle, to live an honorable life, to devote themselves 100% to everything they do, or exit dishonorably. *Spiritual Warrior 2009 Audio, Sunday, Oct. 4, 2009: 3:47:00 to 3:51:34.* During the opening session on Sunday, Defendant promised his participants that he would facilitate their enlightenment through the activities of the week; told them the events of the week would be difficult and challenging; told them they would have many altered states experiences before the week ended; and told them the threshold experiences of the week would make them uncomfortable but were necessary for them to grow in capacity. *Id. at 9:52:35 to 9:54:32, 10:08:41 to 10:09:30, and 5:25:05 to 5:25:33.* He also told them that altered states were the only empirically proven way to move forward in their evolution.

The events of the week were a closely guarded surprise for the group. When they signed up, participants did not know what to expect. On Sunday, during the opening session, Defendant exhorted everyone to participate in the events of the week 100 % in order to get the full value of their "investment." Defendant called this "playing full on" and promised the group they would leave different people. *Id. at 10:36:34 to 10:36:54.* During the opening session, Defendant encouraged participants to shave their heads to show their willingness to play full on. Many

Office of the Yavapai County Attorney
255 E. Gurley Street
Prescott, AZ 86301
Phone: (928) 771-3344 Facsimile: (928) 771-3110

witnesses will testify they shaved their heads, demonstrating to James Ray and to themselves their intention to enter into the activities of the week 100%, and to "play full on."

When participants showed a reluctance to participate in certain activities, Defendant would again exhort them to "play full on." Participants will testify that, by the end of the week when they entered Defendant's sweat lodge for the grand finale event, they were exhausted, mentally weak, and fully conditioned to follow Defendant's instructions.

During the opening session on Sunday, participants were instructed to write their intentions for living and to read them aloud. Victim James Shore read his statement that first day, and the audio reflects his commitment to live his life like a Samurai warrior, to "live honorably" … "on the path to enlightenment." *Id. at 4:31:03 to 4:32:06.* This statement by James Shore is highly probative into his state of mind and his actions inside the sweat lodge. The evidence at trial will show that James Shore dragged an unconscious participant to the opening of the sweat lodge at the 7th round, saving her life, then returned to the back of the lodge and attempted to save the life of Kirby Brown. When he called out to Defendant that Kirby wasn't breathing and needed to get out, the Defendant replied it was too late, the door was closing and they had to wait until after the next round. Defendant's Samurai warrior theme, used by Defendant throughout the week, was the theme that led James Shore to return to the back of the sweat lodge to try to save Kirby Brown, and ultimately led to his own death.

Beginning on Sunday, Day One, Defendant lead the participants several times in holotropic breathing, an activity that involved hyperventilating in order to achieve what Mr. Ray called an "altered state." *Id. Monday, Oct. 5, 2009: 6:40:31 to 6:45:59.* When participant/witness Dennis Mehravrer spoke on Sunday of his extreme discomfort with the exercise, Defendant told everyone the events of the week were an "accelerated learning

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255 E. Gurley Street
Prescott, AZ 86301
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program," that they had to be willing to "push the threshold" and to be uncomfortable in doing so. Defendant also reassured the group that the threshold activities were being held in a controlled environment, and told them not to do these activities at home. *Id. Sunday, Oct. 4, 2009: 10:47:49 to 10:49:57.*

Beginning on Day Three, Defendant imposed a Code of Silence. The Code of Silence meant that participants could not speak to anyone at any time for any reason. Defendant imposed this Code of Silence on his 49 participants from Tuesday afternoon until 9 a.m. on Thursday. Witnesses at trial will testify how this Code of Silence later affected their ability (or inability) to speak up inside the sweat lodge and to act to help others in distress. The State's expert Rick Ross will testify how this is a technique designed to control group behavior.

On Tuesday around 5 p.m., Defendant led the group in an activity called the Samurai game. In this activity, Defendant played the role of God. The 49 participants were divided into two teams. When a participant violated a rule of the game, Defendant, as God, would pronounce them dead. *Id. Tuesday, Oct. 6, 2009: 2:47:20 to 2:47:50.* That "dead" participant then had to lie down on the cement floor and not move a muscle, and not get up for any reason, even to use the restroom. *Id. at 2:43:11 to 2:44.* Victim Kirby Brown was one of the first participants to be pronounced dead by Defendant as "God." When the Samurai game broke for dinner, the Code of Silence remained in place for all participants; those who had been pronounced "dead" by Defendant did not get dinner. They remained dead, lying in the same spot where they first fell.

Kirby Brown did not get dinner and continued to lie on the floor in great discomfort. The audio reveals the extent of her discomfort and is relevant to Kirby's state of mind inside the sweat lodge on Thursday. It is also relevant to Defendant's knowledge of his influence on Kirby, and how determined Kirby was to follow his word. Kirby talks about her experience as "dead" at

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255 E. Gurley Street
Prescott, AZ 86301
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the microphone during an open mike session on Thursday morning. Kirby tells Defendant that she lay on the cold cement floor, sick to her stomach, for about five hours, not moving, needing to use the facilities, but intent on "playing full on" and obeying the rules imposed by Defendant. Kirby says that she was so determined to play by Defendant's rules that when she threw up ("puked"), rather than break Defendant's rules and go to the restroom, she swallowed her own vomit under the blanket and continued to lay there, suffering and in pain. *Id. Thursday, Oct. 8, 2009:1:32:27 to 1:33:40.*

After dinner, the Samurai game continued. Once a player was declared dead he or she could not move. If he or she moved, this was considered "dishonorable," causing another team member to die. Witnesses will testify how this Samurai game emphasized that their conduct impacted others at the Spiritual Warrior seminar and inside the sweat lodge. Expert Rick Ross will discuss this large group awareness technique as well.

The Samurai game did not end until about 11 p.m. with Mr. Ray declaring that everyone was dead. Kirby Brown was finally allowed to get up from the ground, but still under the Code of Silence, as was everyone. Participants were then led into their next challenge, the Vision Quest, another "threshold experience." They were given a few minutes to gather a sleeping bag, their writing tools and journals. In the dark, each participant was led to a location in the desert around Oak Creek and left here, alone, for the next 36 hours. *Id. Tuesday, Oct. 6, 2009: 1:27:57 to 1:29:34.*

Each was instructed to draw a small six foot circle, called their medicine wheel. They were told to stay inside that circle for the entire time, even to relieve themselves and when defecating. During these 36 hours, that began on Tuesday at 11 p.m. and ended on Thursday morning at 6:30 a.m., participants were not allowed any food or any water, and not allowed to

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255 E. Gurley Street
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leave their small circles. The Code of Silence was still in place and participants were encouraged not to sleep. *Id. at 2:07:14 to 2:07:37.* Less than 8 hours later, participants were lead into the Defendant's sweat lodge ceremony, also a circular enclosure that participants were exhorted to stay in. The 36 hours of confinement to a small circle, on their honor, conditioned participants for the next event that also required participants to stay inside an enclosure and to act honorably, like warriors. Rick Ross, the State's expert, will testify about this topic.

Prior to the Vision Quest, participants were told the activity was intense, that they "were just getting started," that they needed to conduct themselves with impeccability and it was time to put their lives on the line and what they stood for. *Id. at 1:27:54 to 1:29:34.* On Day 5, Thursday, around 6:30 a.m., each participant was picked up from their Vision Quest, walked back to the retreat center, and allowed to take a shower, still under the Code of Silence. Their abstinence from food and water for the last 36 hours came to an end. They gathered for breakfast and were told to eat light. Then, they gathered in the Crystal Hall where the Code of Silence was lifted. Still unaware of what the next activity was, participants were reminded to hydrate.

There was no lunch that day. Defendant showed his participants a clip from the movie *The Last Samurai* (which he did throughout the week), then briefed them on the last event, the grand finale, his sweat lodge ceremony. About 30 minutes before entering the sweat lodge, participants learned for the first time about the activity. In briefing his participants about the sweat lodge ceremony, Defendant told them the point of the exercise was to have an "altered experience" and an "extreme altered state;" that the heat would be the most intense they'd ever experienced; that they would feel like they're going to die; that their skin would feel like it's going to fall off their body; challenged them to "play full on;" told them to surrender to it; and told them they had to face death and overcome it. *Id. Thursday, Oct. 8, 2009, 1:43:00 to 2:55:32.*

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At trial, witnesses will testify that their frame of mind inside the sweat lodge was the result of all the activities of the week, not just the briefing that immediately proceeded. They will testify that Defendant told them earlier in the week that altered experiences were the only empirically proven events to move them forward in their evolution; that they were lead by Defendant to trust that this intense heat experience was not dangerous; that they were afraid, all week long, of disappointing Defendant; and that they wanted and desired to live up to Defendant's expectations to stay inside the sweat lodge like a "warrior" in order to "live impeccably" and "with honor." They will further testify about their attempts to "surrender to death" in order to survive it, as instructed by Defendant, and their trust in Defendant's teachings that enduring the virtually unbearable heat to achieve an altered mental state was a good, healthy thing to do.

B. The Audio is Relevant under Rules 401, 402 and 403 of the Arizona Rules of Evidence.

Defendant wants this Court to exclude the audio precisely because it is highly probative in this case. Defendant wants the jury to be ignorant of the events of the week that were designed to condition and groom participants to follow and trust Defendant, and that enable the jury to understand the extent of Defendant's persuasion on the victims and witnesses. The week long seminar was intended to make participants believe that their money was well spent; that "threshold experiences" and "altered states" were necessary to accomplish Defendant's promised rewards; and ultimately to ignore their bodies' symptoms of heat-related injuries inside the sweat lodge. The Arizona Supreme Court has noted, "[e]xplanation of events which occur before and after a crime can be admitted in order that the full story be understood." *State v. Cook*, 150 Ariz.

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470, 472, 724 P.2d 556, 558 (1986), citing *State v. Richmond,* 114 Ariz. 186, 194, 560 P.2d 41, 49 (1976), *cert. denied,* 433 U.S. 915, 97 S.Ct. 2988, 53 L.Ed.2d 1101 (1977).

Defendant hired Michael Barber, who will testify in this case, to tape the Spiritual Warrior 2009 seminar. The best evidence of the events of the week is this audio. It is highly relevant as evidence of the state of mind of both the Defendant and the participants. In order to understand how Defendant recklessly caused three deaths, it is imperative to understand the Defendant's conditioning and grooming of the participants all week long to trust him and follow him. The audio also demonstrates Defendant's knowledge of his own use of techniques to persuade participants to do things they wouldn't normally do and it demonstrates Defendant's knowledge of the impact of his techniques on his followers.

In this Court's *Under Advisement Ruling on Defendant's Motion in Limine (No. 2) to Exclude Evidence of Defendant's Financial Condition and Business Practices, 1/13/11,* this Court correctly ruled that "if a defendant is aware that a particular mental state of another person will result in the other person being placed at such a risk by the conduct of the defendant, the mental state of the other person is relevant to the question of whether the defendant acted recklessly."

In order to understand the mental state of the victims, it is necessary to hear how Defendant conditioned them all week long play full on, to act like Samurai warriors, to live honorably and to surrender to death. In order to understand that Defendant knew the mental state of the victims, it is necessary to hear how he conditioned them all week long and how he interacted with them.

The audio of the events completes the story for the jury; excluding the audio from this case would be like excluding the meeting of the bank robbers where the plan to rob the bank was

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discussed. Exclusion of the audio would cast the facts of this case in a disturbingly misleading light, suggesting that participants merely showed up to participate in the sweat lodge without any conditioning and preparation by the Defendant. Such an unfair presentation of the facts should not be allowed and is contrary to the interests of justice.

C. The State timely noticed the audio as an exhibit in this case

As this Court is aware, the State had to litigate Defendant's disclosure of the Spiritual Warrior 2009 recordings. The State did not receive the recordings from Defendant until January 28, 2011. Defendant's assertion in his motion that the State did not notice its intent to introduce the audio until February 18, 2011, is wrong. The State's evidence list, timely filed on January 31, 2011, provided notice of the State's intention to use the recordings at trial. In addition, the State's 34th Supplemental Disclosure Statement, also filed on January 31, 2011, listed the "Audio Recording of the 2009 Spiritual Warrior Event" as evidence the State intended to use at trial.

D. State's previous motion in limine regarding the examination of witnesses regarding private or sensitive personal information revealed to Defendant during the 2009 Spiritual Warrior Seminar or mentioned in the departmental report and supplements.

Defendant argues the audio should be precluded because it contains private conversations. This is untrue. The audio contains no private conversations with any participants. All conversations occur within a very public, large group setting and are relevant.

To the extent that sensitive information is contained in the audio, the State withdraws its motion in limine filed in October 2010. The State did not have the benefit of the audio at the time it filed the motion in limine. The relevance of personal or sensitive information should be determined by the Court at trial in the context of the testimony and pursuant to the rules of evidence.

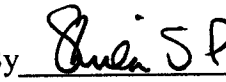
Office of the Yavapai County Attorney
255 E. Gurley Street
Prescott, AZ 86301
Phone: (928) 771-3344 Facsimile: (928) 771-3110

CONCLUSION

Evidence is relevant if it "has any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Ariz. R. Evid. 401. The audio contains Defendant's own words as well as the words of two of the deceased. It clearly is relevant to the mental states of both the Defendant and the participants, to complete the story for the jury, and to rebut Defendant's defense that participants were free to leave the sweat lodge.

Defendant wants the jury to view his conduct in a sanitized vacuum, not within the full and true context of his acts. The Defendant does not want the jury to comprehend the mental states of the victims and other participants as they entered and remained inside Defendant's sweat lodge in spite of significant distress. Defendant does not want the jury to know that Defendant was fully aware of the techniques he had deployed all week in order to persuade victims and participants to follow his lead and his words. Defendant does not want the jury to have highly probative and relevant information in deciding whether he recklessly caused the deaths of three people. Defendant wants the jury to believe his conduct begins – and ends – within a three-hour period. It does not. A fair presentation of the facts in this case is fundamental to the criminal justice system and in the interests of justice.

Respectfully submitted this 25th day of February, 2011.

By 
SHEILA SULLIVAN POLK
YAVAPAI COUNTY ATTORNEY

Office of the Yavapai County Attorney
255 E. Gurley Street
Prescott, AZ 86301
Phone: (928) 771-3344 Facsimile: (928) 771-3110

COPIES of the foregoing emailed this 25th day of February, 2011:

Hon. Warren Darrow
Dtroxell@courts.az.gov

Thomas Kelly
tkkelly@thomaskellypc.com

Truc Do
Tru.Do@mto.com

By: Kathy Durre

COPIES of the foregoing delivered this 25th day of February, 2011, to

Thomas Kelly
Via courthouse mailbox

Truc Do
Munger, Tolles & Olson LLP
355 S. Grand Avenue, 35th Floor
Los Angeles, CA 90071-1560

Via U.S. Mail

By: Kathy Durre