

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

UNITED STATES OF AMERICA	}	
	}	
-vs-	}	2:07-cr-325-CRV
	}	
RICHARD F. SCRUGGS	}	
THE SCRUGGS LAW FIRM, P.A.	}	
	}	

**RESPONSE OF UNITED STATES OF AMERICA TO
DEFENDANTS' MOTION TO STRIKE**

Comes now the United States of America, by and through its Special Prosecutors, and responds as follows to the Motion to Strike filed by the Defendants, Richard F. Scruggs and The Scruggs Law Firm, P.C. (hereinafter "Scruggs").

INTRODUCTION

The United States of America has previously filed a brief which addresses the four arguments presented by Defendants' motion. The government's brief includes an appendix which outlines only a portion of the expected evidence.

1. There is probable cause that Richard F. Scruggs and The Scruggs Law Firm (Scruggs) are guilty of criminal contempt.

a. On September 1, 2006, E.A. Renfroe & Co. (Renfroe) sought a preliminary injunction against its former employees, Cori Rigsby Moran (Moran) and Kerri Rigsby (Rigsby) requiring them to return confidential records of State Farm which they had purloined.

b. On October 16, 2006, Scruggs, along with four other law firms, filed a purported class action, *Dennis R. And S. Imani Woullard v. State Farm* in the Southern District of Mississippi, Southern Division, 1:06cv1057LTS-RHW.

c. State Farm filed an appearance in *Woullard* on November 8, 2006.

d. Judge Acker held an Evidentiary Hearing on November 21, 2006. In Judge Acker's Order, he stated, "The basic facts bearing on Renfroe's request for preliminary injunctive relief are, for the most part, undisputed."

Judge Acker found that Renfroe provided adjusters to State Farm to assist in handling the multitude of claims relating to Hurricane Katrina. Moran and Rigsby had previously executed an Employment Agreement that required non-disclosure, confidentiality, and the avoidance of conflicts of interest, both in appearance and in fact, regarding any information received by them during the course of their employment.

In adjusting claims, Rigsby and Moran thought that State Farm acted in an inappropriate manner. They did not inform Renfroe. They copied approximately

15,000 confidential documents in 2006, and delivered them to the Scruggs. On the advice of counsel, presumably Scruggs, they also provided documents to the FBI and the Mississippi Attorney General.

Unknown to Judge Acker was the fact that eight months earlier Scruggs had filed a *qui tam* action on behalf of the Rigsbys in the Southern District of Mississippi against State Farm, Renfroe and others. *Rigsby v. State Farm Insurance Company*, 1:06-cv-00433-LST-RHW.

e. On December 8, 2006, the Court entered its finding of fact and Preliminary Injunction,

“Cori Rigsby Moran and Kerri Rigsby, and their agents, servants, employees, attorneys, and other persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise (with the express exception of law enforcement officials) are hereby MANDATORILY ENJOINED to deliver forthwith to counsel for plaintiff all the material they had taken from Renfroe..”

“Defendants and their agents, servants, employees, attorneys, and other persons in active concert or participation with them who receive actual notice of this order by personal service or otherwise, are further ENJOINED not to further disclose, use or misappropriate any material described in the preceding paragraph unless to law enforcement officials at their request.”

f. Renfroe sought compliance with the Injunction on December 14, 2006 and December 18, 2006, by making written request for return of the purloined files. On December 28, 2006, there were multiple telephone calls by Renfroe seeking the return of the files. There was no response from Scruggs.

g. From the filing of *Woullard* on October 16, 2006, through January 23, 2007, there were intense settlement negotiations with State Farm. On January 23, 2007, State Farm and the Plaintiffs' attorneys agreed to a settlement in the amount of Five Hundred Million Dollars, (\$500,000,000) and Ten Million to Twenty Million Dollars (\$10,000,000 to 20,000,000) in attorneys fees.

h. Scruggs first allowed the return of a portion of the purloined documents on February 2, 2007.

The evidence will prove that Scruggs would not give up his bargaining chip of the purloined files until after the settlement of *Woullard*. Scruggs refused to file a motion to obtain permission to deliver his copy of the purloined documents to Attorney General Hood, even though Hood's office advised Scruggs in writing that he should do so. His bargaining chip against State Farm would have been lost by an adverse ruling from Judge Acker, which he should have expected. Scruggs decided to take his chances and put self-interest above compliance with the court order.

i. Scruggs appeared at the court's contempt hearing on March 19-20, 2007,

and testified as follows:

Q. I'm going to get right to the point and ask about your relationship with the Rigsby sisters. One relationship was as an attorney-client; is that correct?

A. That's correct.

Q. And as I understand from Ms. Rigsby's testimony, that relationship was established in February '06?

A. I think initially it was, yes.

j. In March 2007, Jones Funderburg Sessums Peterson & Lee (one of the Scruggs Katrina Group joint venture firms) filed suit against Scruggs and others, in the Circuit Court of Lafayette County, Mississippi, Civil Action L07-135, over the distribution of \$26,500,000.00 in attorneys fees arising out of the settlement with State Farm of approximately 500 cases. The Scruggs' firm stated in an email on January 25, 2007 to Jones during their fee dispute:

"The whistleblowers came to Dick and they were the sole basis for Hood's interest which really was the 80% of why SF wanted to settle. . ."

(Exhibit 1 to First Amended Complaint in *State Farm v. Scruggs*, No. 2:07-cv-188-KS-MTP, Southern District of Mississippi)

2. Once again, Scruggs mis-cites *Young v. United States ex rel Vuitton et Fils*, 481 US 787 (1987), when in fact, a true reading of the case supports the appointment and prosecution in this action. Scruggs repeatedly insults the undersigned and the Court, refusing to properly refer to “Special Prosecutors” despite the statute, court order and case authority under which the Special Prosecutors were duly appointed.

3. Scruggs’ baseless allegation of lack of independence or neutrality exposes the weakness of any defense to the meritorious charges that have been filed.

4. Likewise, Scruggs relies without basis on Alice Martin’s decision to defer the matter to Judge Acker’s appointment of Special Prosecutors. The Eleventh Circuit Court of Appeals has already rejected this argument. There is no constitutional impediment to the charges. The statute itself contemplates a decision by a United States Attorney to decline prosecution. Such a decision is immaterial to the issues in the case and Defendants should be ordered to cease reference to a decision which is not admissible with regard to the issue of Defendants’ guilt of the charge of criminal contempt.

When declining to prosecute, the United States Attorney gave no reason for said decision. Mrs. Martin’s opinion about the merits of the prosecution, if she had one, is irrelevant and has no more prohibitive value in this case than the opinion of any other competent lawyer on the question of whether this particular prosecution is

meritorious. Any assertion by Defendants of a reason for the decision to decline prosecution is pure speculation. For aught appearing, the United States Attorney declined not because she found no merit in this charge of criminal contempt, but because she was honoring the written request of the Defendant's friend, the Mississippi Attorney General, not to prosecute his "confidential informant" (whatever that is supposed to mean); or that she did not think it was appropriate to prosecute a lawyer who was at that time purportedly representing the interest of the United States in a multi-million dollar *qui tam* action pending in Federal Court; or that she and her staff were fully occupied with other matters; or that she received instructions from persons without knowledge of the facts to decline prosecution, or that she had been presented only side of the case in the filings by Scruggs and did not have the time to investigate and consider all of the facts which are now known; or some combination of the above.

MERITS OF THE DOCUMENT SUBPOENA AND GOVERNMENT MOTION

Scruggs cites *Unites States v. Nixon*, 418 U.S. 683 (1974) in support of its objection. However, not surprisingly after a study of the case, the Supreme Court decision actually supports the issuance of a pre-trial subpoena duces tecum by Special Prosecutors for pre-trial discovery from a potential Defendant/unindicted co-

conspirator. The Scruggs Defendants do not deserve more protections than the sitting President of the United States.

In *Nixon*, a four page long list of dates and conversations of the “secret” White House tape recordings were subpoenaed for production in advance of the trial of the Defendants, Messrs Halderman, Ehrlichman, et al. “Of course the contents of the subpoenaed tapes could not at that stage be described fully by the Special Prosecutor, but there was a sufficient likelihood that each of the tapes contained conversations relevant to the offenses charged in the indictment.” citing *U. S. v. Gross*, 24 FRD 138 (SDNY 1959)” *Id.* at 700.

The Supreme Court continued its discussion, “enforcement of a pre-trial subpoena duces tecum must necessarily be committed to the sound discretion of the trial court. . . We are persuaded the District Court’s denial of the President’s Motion to Quash was consistent with Rule 17(c). We also conclude that the Special Prosecutor has made a sufficient showing to justify a subpoena for production *before* trial. The subpoenaed materials are not available from any other source¹, and their examination and processing should await trial in the circumstances shown.” citing

¹ Special Prosecutors herein have not at this time been given access to the copy of the Defendants’ computer hard drive obtained by the U.S. Attorney for the Northern District of Mississippi in prosecution of Scruggs for conspiracy to bribe a Circuit Judge in a dispute over \$26,500,000 in Katrina litigation fees.

Bowman Dairy Co. v. U. S., 3141 U. S. 214 (1952). *Id.* at 702. The integrity of the criminal justice system and public confidence depend on full disclosure of all facts within the framework of the Rules of Evidence. *See Nixon, Id.* at 709-710.

The Court in *Nixon* set out factors that the government must show to support its motion and subpoena: (a) that the documents are evidentiary and relevant; (b) they are not otherwise reasonably procurable in advance of trial by the exercise of due diligence; (c) that the party/government can not properly prepare for trial without such advance production; (d) the failure of such pre-trial review of documents may tend to unreasonably delay trial; and (e) the request is made in good faith and not intended as a fishing expedition.”

This is not a matter relating to Rule 16 disclosure by the Defendants. Again, Scruggs’ motion misses the mark. It is a Rule 17(c) matter concerning pre-trial review to avoid delays and is expressly authorized by FRCP. It is in no way oppressive or unreasonable.

There can be no doubt that the documents requested include those which may be directly admissible as relating to the charges, in addition to admissible evidence necessary to impeach the veracity of the pre-trial sworn testimony of Scruggs or the testimony of anticipated witnesses at trial. The Scruggs Law Firm, PC, has no privilege against self-incrimination. Documents have been subpoenaed from the

corporate Defendant. No privilege or hearsay objection prohibits the necessary subpoenaed production, *See, Nixon*, supra.

There is little doubt the receipt of voluminous documents and computer disks at the commencement of a trial would not give the United States a reasonable opportunity to study and utilize the material at trial and which would therefore require a delay in the proceedings. This is a primary reason for Rule 17(c), Federal Rules of Criminal Procedure. Only the Defendant has many of the requested documents which are material, and include its computer hard drive. The documents discussed below are necessary, material and relevant to the expected testimony at trial and do not constitute a blind cast of the fishing net:

Document Request Number 1:

The first set of requests relate to correspondence or communications between the Defendants and the Office of the Attorney General of Mississippi. Scruggs' pre-trial testimony, and positions taken in his pleadings in *Renfroe*, establish probable cause to believe that the Defendants schemed with Attorney General Hood to avoid compliance with the injunction, and acted in concert, to obtain the purloined documents, share the documents, negotiate a settlement with State Farm using the undisclosed, unidentified, and unreturned purloined documents, and/or to thereafter acquiesce in the return to Renfroe's counsel of one set of the documents, for purposes

of damage control in this contempt action, while of course keeping access to or possession of another set for future litigation use.

It was Attorney General Hood who requested that Scruggs not be prosecuted because he was acting as his so called “confidential informant” despite the irrelevance of that “status” to the facts of and basis for the injunction. This is the same Attorney General who undisputedly entered into a Five Million Dollar settlement with State Farm in which his office accepted payment to reimburse expenses incurred in his so called criminal investigation, and who agreed in exchange, not to pursue further criminal action against State Farm or its officers. It is same Attorney General who State Farm subsequently sued in a civil action in Federal Court for breach of said agreement when the Attorney General’s office, reportedly working in concert with Defendants, issued a new set of Grand Jury subpoenas to State Farm. In that action, State Farm obtained a preliminary injunction against Attorney General Hood in the United States District Court for the Southern District of Mississippi. Said injunction was continued in effect after a hearing in which the Attorney General was present and scheduled to testify under oath on November 6, 2007 , and in which he succeeded in avoiding having to take the stand and undergo unwanted cross examination by State Farm counsel.

It is the same Attorney General who reportedly requested documents from the Mississippi Insurance Commissioner after the Commissioner refused to provide said documents concerning ongoing settlements with policyholders to Scruggs when Scruggs requested the documents.² It is of course the same Attorney General that has received generous campaign contributions from Scruggs. The Attorney General reportedly filed grand jury subpoenas to State Farm after the Mississippi Insurance Commissioner refused his request for policyholders information, this leading to the *State Farm v. Hood* injunction.

It is the same Attorney General who reportedly appointed certain attorneys to represent the state in civil actions, and who have also represented Scruggs in fee dispute litigation, who have now plead guilty in federal court to judicial bribery charges arising out of the state court cases in which they were involved on behalf of Scruggs.

In addition, the United States anticipates Scruggs calling Attorney General Hood as a witness. The subpoenaed documents are relevant, material and admissible to show their working relationship and to impeach Hood's partisan testimony. The correspondence is also expected to show that Hood's assistant warned Scruggs to

² These are settlements handled through the Insurance Commissioner's Office directly with policyholders after Judge Senter refused to approve the *Woullard* class action settlement negotiated by Scruggs.

seek the Court's permission before giving his copy to Attorney General Hood. Scruggs chose not to do so, likely expecting an adverse ruling which would deprive him of his bargaining chip and leverage over State Farm. The evidence will show that Scruggs took his chances and did so with intent.

Scruggs has testified that he was not involved prior to or knowledgeable of the "data dump" weekend in June 2006 prior to its occurrence, when his pre-existing clients, the Rigsby sisters, purloined and made multiple copies of approximately five thousand confidential State Farm documents using their company computers and passwords, and, supposedly without prior notice, managed on Monday morning, to provide a copy to Attorney General Hood's office, and shortly thereafter to Scruggs. The documents requested in the Special Prosecutors' subpoena relate to that testimony by Scruggs.

Scruggs testified that in spite of his contention that he is not subject to the injunction, that on the very evening of its entry, December 8, 2006, after business hours, he called and discussed with Attorney General Hood, a means to avoid returning the documents to Renfroe's attorneys as required by the injunction. The requested documents relate to that testimony and Scruggs' purported defense.

Scruggs has testified that he first met the Rigsbys and first received the purloined documents from them in February 2006. However, a career attorney for the

State of Mississippi, Lee Harrell, a former Assistant Attorney General under Scruggs' close friend and colleague, Mike Moore (former Mississippi Attorney General involved in the multi-billion dollar tobacco litigation), and Deputy Insurance Commissioner, has testified under oath, that at a documented meeting at the Commissioner's Office in Jackson on December 15, 2005, Scruggs, who personally signed in, indicated that he had "insiders"/inside State Farm during discussions, in which he attempted to exert influence through the Commissioner's office to coerce a \$500,000,000 settlement against State Farm. At this December 2005 meeting, three months before Scruggs has testified he met the "insiders", Scruggs discussed, "claim files and engineer reports." These are the type of purloined documents given to Scruggs by the Rigsbys. The "engineer reports" are the highlight of Scruggs' theory of purported misconduct and the ABC 20/20 appearance.

This same state official has testified that Attorney General Hood engaged in discussions including threats to indict the corporate officers of State Farm if they did not enter into a settlement agreement which Hood and Scruggs were reportedly concurrently negotiating.

It can not be legitimately argued that item (1) of the government's subpoena is a fishing expedition. It is tailored to direct admissible evidence to show the statements which the Defendants use as defenses and to explain their actions, are false

and that the Defendants' veracity is highly questionable. The documents also are expected to show discussions between Scruggs and the Attorney General evidencing the motivations and intent of disobedience to the Court's injunction in order to further their own purposes during negotiations with State Farm.

Document Request Number 2:

The request for communications between Scruggs and the United States Attorney in Jackson or the Department of Justice, relate to the now unsealed *qui tam* action as well as the delivery of the data dump documents on Monday following the weekend in which the documents were wrongfully taken. Among the documents that government's request expects to be produced, is correspondence on December 8, 2007, the exact date of Judge Acker's Order, in which counsel for Plaintiff in the *qui tam* action, of which Scruggs is one counsel, transmitted a batch of the data dump documents to the United States Department of Justice. The evidence is expected to show whether or not this was a coincidence or whether it is yet another act of disobedience and contempt of court.

Further, Scruggs' counsel have recently revealed in the underlying *Renfro* lawsuit, that Scruggs did not return documents that it maintained, copies of which were submitted to the government in conjunction with the filing of the *qui tam* action in March or April 2006, with the excuse that Scruggs did not believe the court's order

included said purloined documents if they were given to the government as a part of the *qui tam* action [not a criminal action]. This avoids the obvious question: if the only copy that Scruggs had was given to the government, then Scruggs could not return it. It is apparent that Scruggs kept a copy for his own use after giving the government a copy of the documents in connection with the *qui tam* initial disclosures. It appears that Scruggs has been using illegally retained documents since that time. Exactly what was submitted to the government and correspondence in connection therewith may be material and relevant to this action. Based on other recent filings in *Renfro*, the government believes Scruggs' contempt extended well beyond February or March 2007. The subpoenaed records should evidence this.

Document Request Number 3 and 4:

With regard to document request number 3 and 4 relating to communications between Scruggs and the Rigsbys, the requested documents go to the very heart of the documents in question and the veracity of Scruggs' prior testimony and excuses that are outlined above under discussion of Document Request Number 1. In this criminal contempt action, Scruggs has attempted to distance himself from the Rigsby sisters and contends that he did not act in concert with them nor was he acting as their attorney. The requested documents will show the relationship between Scruggs and the Rigsbys, including the fact that they acted in concert, that all times he acted as

their attorney; that Scruggs and the Scruggs Katrina Group have repeatedly asserted the attorney-client privilege regarding discussions with the Rigsby sisters during their depositions in various Katrina lawsuits in Mississippi; that Scruggs has had the Rigsbys on a monthly salary as consultants; that Scruggs selected their attorneys in *Renfroe* and has paid their legal fees in the *Renfroe* suit; and who possibly has agreed to indemnify the Rigsbys for civil penalties or liabilities associated with their actions to assist Scruggs; and it was the Rigsbys who, according to their answer in the *Renfroe* suit, gave the purloined documents to Attorney General Hood at Scruggs' direction.

The requested documents also include any communications subsequent to the December 8th injunction in which the Rigsbys may have requested that Scruggs comply with Judge Acker's order (as Scruggs used the documents to his own interest and their own *qui tam* interest). The relationship with the Rigsbys goes to the very heart of the case and the wrongfully taken documents .

Document Request Number 5, 6 and 7:

The phone records requested are limited in time and scope and are necessary to test the veracity of Scruggs's admissible pre-trial sworn testimony and other purposes as discussed in the preceding paragraphs.

Document Request Number 9:

This request includes the transmissions from Scruggs to other Scruggs Katrina Group law firms or third persons relating to the distribution of the very purloined documents in question and their return. The request goes directly to Scruggs's intent and motivations and use of the documents during the time period in question and the circumstances surrounding the return of some of the copies of the documents after his purposes were accomplished in the late January 2007 Class Action settlement announcement with State Farm, in which a fee of \$10,000,000 to \$20,000,000 was provided for.

The request also concerns the now revealed and sworn testimony by witness Maria Brown in Mississippi, that members of the formerly close-knit Scruggs Katrina Group maintained electronic copies of the purloined documents on their computers and continued to use said documents despite their receipt of the injunction on December 8, 2006. Said witness also testified that the hard copies of said documents were not returned to Scruggs' counsel in Birmingham until approximately March 2007 after a written e-mail request from the Scruggs Law Firm, only made at that time, in order to try and minimize Scruggs' legal difficulties in this court. Other evidence of continued retention and use of the purloined documents is expected by this request.

Document Request Number 10 and 11:

These requests relate to payments to and correspondence between Scruggs and the law firms that Scruggs selected and paid to represent the Rigsby sisters in the *Renfro* litigation. Again, Scruggs has attempted to distance himself from that litigation and contends that he is not acting as their attorney in that litigation. If that is the case, then the requested documents relate to his allegation and his supposed defense and impeachment thereof.

Document Request Number 12:

This request relates to obtaining a copy of the computer hard drives of the Scruggs Law Firm. It is necessary for all the reasons discussed above. The government does not rely on Scruggs to accurately comply with the document requests. The accuracy of Scruggs production needs to be honestly checked by looking at the actual hard drive.

Although the United States Attorney for the Northern District of Mississippi has reportedly obtained a copy of the same hard drive in connection with the criminal indictment of the Defendants in that jurisdiction for conspiracy to bribe a Circuit Court Judge in an underlying fee dispute involving the Scruggs Katrina Group and a Twenty-Six Million Dollar fee as a part of the Katrina litigation, Special

Prosecutors have not obtained access to that mirror image and request one for similar purposes.

WHEREFORE, PREMISES CONSIDERED, the United States' Special Prosecutors move this Honorable Court to its Motion or Pre-trial Production and deny the Defendants' Motion to Quash disguised as a Motion to Strike.

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on the 1st day of February, 2008, I have caused of the above and foregoing **Response of United States of America to Defendants' Motion to Strike** to be delivered for service upon the following:

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