

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF MISSISSIPPI

UNITED STATES OF AMERICA . Cause No. 3:07CR192
. .
Plaintiff . Oxford, Mississippi
. March 14, 2008
v. . 10:04 a.m.
. .
RICHARD F. "DICKIE" SCRUGGS .
. .
Defendants .
.

CHANGE OF PLEA AS TO COUNT 1 OF THE INDICTMENT
BEFORE THE HONORABLE NEAL B. BIGGERS
U.S. SENIOR DISTRICT JUDGE

APPEARANCES:

For the Government: United States Attorney's Office
Northern District of Mississippi
BY: THOMAS W. DAWSON, ESQ.
BY: ROBERT H. NORMAN, ESQ.
BY: DAVID A. SANDERS, ESQ.
900 Jefferson Avenue
Oxford, Mississippi 38655-3608

For the Defendant
Richard F. "Dickie" Scruggs:
JOHN W. KEKER, ESQ.
Keker & Van Nest, LLP
710 Sansome Street
San Francisco, California 94111-1704

Court Reporter: Rita Davis Sisk
911 Jackson Avenue, Room 369
Oxford, Mississippi 38865
(662) 281-3027

Proceedings recorded by mechanical stenography, transcript
produced by computer.

1 (CALL TO ORDER OF THE COURT)

2 **THE COURT:** All right. There are two matters that
3 the Court has been advised are going to be taken up this
4 morning. And we'll take those first, and then we'll get to the
5 motions later. I have been presented with two plea agreements
6 advising that in the case of *U.S. v. Richard Dickie Scruggs* and
7 the case of *U.S. v. Sidney A. Backstrom* the defendants wish to
8 change their plea of not guilty and enter a plea of guilty.

9 Mr. Keker, representing Dickie Scruggs, is that your
10 desire at this time?

11 **MR. KEKER:** Yes, Your Honor, to plead guilty to
12 Count 1.

13 **THE COURT:** All right. Let your client come up.
14 And, Mr. Dawson, if you'll represent the Government.

15 (Parties complying.)

16 **THE COURT:** All right. Do you need that podium,
17 Mr. Keker? Have you got everything there you can -- might
18 be --

19 **MR. KEKER:** I don't know that I need it, Your Honor;
20 but if you want me to use it, I will.

21 **THE COURT:** Well, it's up to you. All right.
22 Mr. Scruggs, is your full name Richard F. Scruggs?

23 **THE DEFENDANT:** Yes, sir.

24 **THE COURT:** All right. The Court is advised that you
25 wish to change the plea that you have previously entered to a

1 plea of guilty; is that correct?

2 THE DEFENDANT: On Count 1, that's correct.

3 THE COURT: On Count 1. Before accepting your guilty
4 plea, there a number of questions I will ask you to assure that
5 it's a valid plea. If you do not understand any of the
6 questions or at any time you wish to consult with your
7 attorney, you may let me know, because it is essential to a
8 valid plea that you understand each question before you answer.
9 Do you understand that?

10 THE DEFENDANT: Yes, sir, I do.

11 THE COURT: All right. Will the clerk please swear
12 the defendant.

13 THE CLERK: (Oath administered.)

14 THE DEFENDANT: Yes, I do.

15 THE COURT: Do you understand now, Mr. Scruggs, that
16 you're under oath; and your answers to these questions will be
17 subject to the penalty of perjury if you do not answer them
18 truthfully?

19 THE DEFENDANT: I do, Your Honor.

20 THE COURT: What is your age?

21 THE DEFENDANT: Sixty-one.

22 THE COURT: And you have a law degree?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And are you presently under the influence
25 of any drugs, medicines, or alcohol that would cloud your

1 thinking?

2 THE DEFENDANT: That impairs my thinking? No, sir.

3 THE COURT: All right. Do you think you fully
4 understand what is happening here today?

5 THE DEFENDANT: Yes, I do.

6 THE COURT: Mr. Dawson, Mr. Keker, do either of you
7 have any doubt about the defendant's competence to enter a plea
8 at this time, Mr. Dawson?

9 MR. DAWSON: I do not, Your Honor.

10 THE COURT: Mr. Keker?

11 MR. KEKER: No, Your Honor.

12 THE COURT: The Court makes a finding that this
13 defendant is competent to enter a plea. Have you had an ample
14 opportunity, Mr. Scruggs, to discuss this case with your
15 attorney?

16 THE DEFENDANT: My attorney and my wife and my
17 family, yes, I have.

18 THE COURT: Are you satisfied with your attorney's
19 representation of you; that is, do you believe that he has
20 represented you competently and fairly in this case?

21 THE DEFENDANT: Yes. I'm very proud to have had an
22 attorney of this caliber, and he is every bit a professional.

23 THE COURT: All right. Do you understand that under
24 the Constitution and laws of the United States that you are
25 entitled to a trial by a jury on this charge, Count 1?

1 **THE DEFENDANT:** I do, Your Honor.

2 **THE COURT:** Do you understand that at a trial you
3 would be presumed to be innocent of this charge, and the
4 Government would be required to prove you guilty by competent
5 evidence and beyond a reasonable doubt before you could be
6 found guilty?

7 **THE DEFENDANT:** Yes, sir.

8 **THE COURT:** Do you understand, that is, that you
9 would not have to prove that you were innocent; rather, the
10 burden is on the Government to prove you guilty beyond a
11 reasonable doubt?

12 **THE DEFENDANT:** I understand, sir.

13 **THE COURT:** And do you understand that during the
14 course of a trial the witnesses for the Government would have
15 to come into court, if you chose to go to trial, and testify in
16 your presence; that your attorney could cross-examine the
17 witnesses for the Government; he could object to evidence
18 offered by the Government; and he could also offer evidence in
19 your behalf? Are you aware of that?

20 **THE DEFENDANT:** I am, Your Honor.

21 **THE COURT:** Do you also understand that if you wish
22 to testify in your own defense, you would have that right to do
23 so; but, also, you have the right not to testify and no
24 inference or suggestion of guilt would be drawn if you chose
25 not to testify? Are you aware of that?

1 **THE DEFENDANT:** I am, sir.

2 **THE COURT:** If you plead guilty here today and I
3 accept your plea, do you understand that you're going to waive
4 your right to a trial; you're going to waive the other rights
5 that I've just discussed with you; there will be no trial; and
6 I will enter a judgment of guilty and sentence you on the basis
7 of your guilty plea after considering a presentence report?

8 **THE DEFENDANT:** Yes, sir, I do.

9 **THE COURT:** Also, if you plead guilty, do you
10 understand that you will also have to waive your right not to
11 incriminate yourself since I may ask you questions about what
12 you did in order to satisfy myself that you are guilty as
13 charged; and you'll have to acknowledge your guilt? Are you
14 aware of that?

15 **THE DEFENDANT:** Yes, sir.

16 **THE COURT:** All right. Now, Mr. Scruggs, having
17 discussed these rights with you, your understanding of what
18 you're waiving by entering a plea of guilty, do you still wish
19 go forward with this guilty plea?

20 **THE DEFENDANT:** I do, Your Honor.

21 **THE COURT:** All right. Have you received a copy of
22 the indictment in this charge?

23 **THE DEFENDANT:** Yes, I have.

24 **THE COURT:** And you've discussed with your attorneys
25 this charge, Count 1, and any possible defenses that you might

1 have in this case?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. In Count 1, you're charged
4 with the crime of conspiracy to attempt to bribe a state judge.
5 In order for you to be found guilty of this charge, the
6 Government would have to prove several elements. I'm going to
7 read those to you at this time. Let me see. I've got a lot of
8 motions and papers up here.

9 All right. In this particular charge of Count 1, there
10 are three elements that the Government must prove beyond a
11 reasonable doubt. I'm going to enumerate them and then ask you
12 a few questions about them.

13 They would have to prove, first, that you and at least one
14 other person came to an agreement to commit the crimes of, one,
15 corruptly offering a thing of value to a person with the intent
16 to influence or reward an agent or state or local government in
17 connection with the business of that governmental agency and
18 that said corrupt offer involved something of value of more
19 than \$5,000 at a time when the local government or agency
20 received benefits in excess of \$10,000 under a federal program;
21 and devising a scheme and artifice to defraud and to deprive
22 the state of Mississippi of its intangible right to honest
23 services, and for the purpose of executing that scheme and
24 artifice, to knowingly cause to be transmitted by means of
25 wire, writings, and sounds in interstate commerce in violation

1 of Title 18, Section 666 of the U.S. Code.

2 The second element that would have to be proven beyond a
3 reasonable doubt is that you knew of the unlawful purpose of
4 the agreement and joined in it willfully, that is, with the
5 intent to further its unlawful purpose. And third, that during
6 the existence of the conspiracy, that you and at least one of
7 the conspirators committed at least one of the overt acts
8 described in the indictment in order to accomplish the
9 conspiracy.

10 Now, the Government, as I said, would have to prove all
11 three of those elements beyond a reasonable doubt. Do you
12 think you understand this charge?

13 THE DEFENDANT: I do, Your Honor.

14 THE COURT: Do you have any questions about it?

15 THE DEFENDANT: No, sir.

16 THE COURT: All right. Do you understand what the
17 maximum possible penalty is under Count 1 of this indictment?

18 THE DEFENDANT: My understanding, it's five years.

19 THE COURT: All right. And a fine?

20 THE DEFENDANT: Yes, sir. I think I understand all
21 the penalties.

22 THE COURT: All right. There's five years'
23 incarceration, up to three years' supervised release after
24 incarceration, up to a \$250,000 fine.

25 Has anyone threatened you in any way or forced you to

1 plead guilty to this charge?

2 THE DEFENDANT: No, sir.

3 THE COURT: All right, Mr. Dawson, there has been a
4 plea agreement entered into that I have here. Would you state
5 the substance of this plea agreement into the record?

6 MR. DAWSON: May it please the Court, the United
7 States Attorney hereby proposes a plea agreement for the Court
8 that has the following provisions: The defendant agrees to
9 plead guilty under oath to Count 1 of the indictment, which
10 charges a conspiracy to corruptly influence a state circuit
11 judge and which carries the maximum possible penalties of five
12 years' imprisonment and \$250,000 fine; three years' supervised
13 release; and a mandatory special assessment of \$100; all in
14 violation of Title 18, United States Code, Section 371.

15 The United States agrees to move the Court to dismiss the
16 remaining counts, 2 through 6 of the indictment, as to this
17 defendant at sentencing. There is no agreement as to the
18 sentence imposed, which shall be in the sole discretion of the
19 Court subject to the Federal Sentencing Guidelines. Both
20 parties reserve their right to speak at sentencing.

21 The defendant agrees, pursuant to 18 U.S.C. Section 3013,
22 to pay the clerk of the court of the United States District
23 Court, prior to sentencing, the mandatory \$100 special
24 assessment fee for pleading guilty to Count 1.

25 There is -- this agreement does not bind any prosecuting

1 authority of any state or other federal district, nor does it
2 bind the Attorney General of the United States with respect to
3 any matter, criminal or civil, involving federal criminal tax
4 laws -- or civil tax laws, for that matter. The defendant and
5 the Government also acknowledge that there are no other
6 agreements, other than this agreement, filed with the Court.

7 I would add one thing with respect to the Paragraph 5
8 concerning the other authorities. I want to make it painfully
9 clear that the investigation with respect to the *Wilson* matter
10 that is currently under investigation -- that this plea
11 agreement and this plea has no affect with respect to any
12 charging decision or subsequent prosecution with respect to
13 that case.

14 **THE COURT:** All right. Mr. Scruggs, you've heard the
15 U.S. Attorney state his understanding of the plea agreement
16 that you entered into with the Government. Did he accurately
17 state it as you understand it to be?

18 **THE DEFENDANT:** Yes, sir, he did.

19 **THE COURT:** Mr. Kecker, was it accurately stated as
20 you understand it to be?

21 **MR. KEKER:** Yes, Your Honor.

22 **THE COURT:** All right. Has anyone offered you or
23 made any promise to you in addition to this plea agreement to
24 cause you to plead guilty?

25 **THE DEFENDANT:** No, sir.

1 **THE COURT:** Has anyone made any prophesy or promise
2 what sentence you would receive in this case?

3 **THE DEFENDANT:** No.

4 **THE COURT:** Did you, as charged in Count 1 of this
5 indictment, enter into a conspiracy to bribe a state court
6 judge?

7 **THE DEFENDANT:** I did.

8 **THE COURT:** All right. Mr. Dawson, would you state,
9 summarily, what the evidence is that the Government could
10 present in support of this charge if it were to go to trial?

11 **MR. DAWSON:** Thank you, Your Honor. May it please
12 the Court, were this case to go to trial, the Government would
13 prove through judicial notice, presentation of documentary
14 evidence, tape recordings, and factual testimony of lay
15 witnesses that between March of 2007 and November of 2007, in
16 the Northern District of Mississippi, Timothy R. Balducci,
17 Richard F. "Dickie" Scruggs, and others conspired to bribe a
18 state circuit court judge.

19 The evidence would show that in March of 2007 a lawsuit
20 was filed in the circuit court of Lafayette County,
21 Mississippi, styled *Jones et al. v. Scruggs et al.*, being Civil
22 Action No. L07-135. The case was assigned to State Circuit
23 Judge Henry Lackey, and defendant Richard F. "Dickie" Scruggs
24 and the Scruggs Law Firm were named as defendants in that
25 \$26.5 million lawsuit.

1 During the latter part of March 2007, during a meeting at
2 the Scruggs Law Firm, the *Jones v. Scruggs* case was being
3 discussed. Knowing that Timothy R. Balducci and Judge Lackey
4 had been friends for many years, the coconspirators asked
5 Balducci to explore the possibility of influencing the judge.

6 On or about March 28th, 2007, Mr. Balducci met with Judge
7 Lackey and explained to the judge that he would consider it a
8 personal favor if the judge would resolve the lawsuit in favor
9 of Dickie Scruggs and Scruggs Law Firm. During that same
10 conversation, Balducci expressed a desire to have Judge Lackey
11 become *of counsel* with his law firm upon his retirement, a
12 position which would result in Judge Lackey being paid by the
13 firm simply to allow the use of his name on the firm
14 letterhead.

15 On or about May the 9th, 2007, Timothy R Balducci told
16 Judge Lackey that his relationship with Dick Scruggs was such
17 that they could talk very privately; and that if the judge was
18 inclined to rule in Scruggs' favor, everything would be good.
19 Balducci assured Judge Lackey that the only other person in the
20 world who knew about their discussions was Dickie Scruggs.

21 Later, on September the 21st, 2007, Balducci agreed to pay
22 the judge \$40,000 in cash. Immediately after the meeting with
23 Judge Lackey and agreed on a -- and agreeing on the \$40,000
24 figure, Balducci placed a four-minute call to the Scruggs Law
25 Firm.

1 On September the 27th, 2007, Balducci delivered an initial
2 installment of \$20,000 in cash to Judge Henry Lackey in his
3 chambers in Calhoun City, Mississippi. Balducci then traveled
4 to Oxford, Mississippi, to the Scruggs Law Firm.

5 On October the 18th, 2007, Richard "Dickie" Scruggs had a
6 telephone conversation with Steven A. Patterson wherein they
7 discussed the order. Scruggs and Patterson was to have --
8 Scruggs asked Patterson to have Balducci leave the order on his
9 desk and pick up a package. On that same day, Timothy R.
10 Balducci delivered \$10,000 in cash to Judge Lackey, picked up
11 an order from Judge Lackey and delivered it to the Scruggs Law
12 Firm and picked up a package containing a \$40,000 check.

13 On November the 1st, 2007, Balducci delivered a final
14 \$10,000 cash payment to Judge Lackey and obtained an amended
15 order favorable to the Scruggs Law Firm. Later that day,
16 having been confronted and having agreed to cooperate with the
17 Government, Balducci wore a body recorder and engaged Richard
18 F. "Dickie" Scruggs in recorded conversations regarding the
19 judge's exposure and the need to pay him an additional \$10,000.

20 Dickie Scruggs agreed to take care of it and asked
21 Balducci for advice on how to handle that. Balducci agreed to
22 prepare jury instructions for which he would be paid the
23 \$10,000 to reimburse him for the additional payment to the
24 judge.

25 On November the 5th, 2007, Richard F. "Dickie" Scruggs

1 caused an e-mail to be -- I believe November 2nd caused an
2 e-mail to be sent to Timothy R. Balducci forwarding part of the
3 false documentation to cover the additional \$10,000. That same
4 day, Balducci traveled to Oxford and took delivery of the
5 Scruggs Law Firm \$10,000 check.

6 Finally, the Government would put on evidence, documentary
7 and testimony, to show that Circuit Court Judge Henry Lackey
8 was an agent of both Lafayette County, Mississippi, and the
9 Administrative Office of Courts; and that the bribe paid to
10 Judge Lackey was in connection with a business transaction or a
11 series of transaction of both Lafayette County and the
12 Administrative Office of Courts for the state of Mississippi.

13 Also, the Government would show that both agencies
14 received, within a one-year period of the offense charged,
15 benefits in excess of \$10,000 under a federal program involving
16 a grant, subsidy, loan, guarantee, insurance, or other form of
17 federal assistance.

18 Your Honor, at all times during the course of this
19 investigation, Judge Henry Lackey was acting in an undercover
20 capacity cooperating with the FBI and nothing herein is to
21 imply that Judge Lackey had any complicity in any criminal
22 activity. And with the Court's permission, I'd like to file a
23 copy of this factual basis with the Court.

24 **THE COURT:** Very well. You may do so.

25 (PASSING DOCUMENT TO CLERK)

1 **THE COURT:** Mr. Scruggs, you have heard the United
2 States Attorney state what evidence he could present against
3 you on this particular charge if the case were to go to trial.
4 Do you agree with the prosecutor's summary of what you did?

5 **MR. KEKER:** Your Honor, could I interrupt to say that
6 much of the prosecutor's summary -- we discussed it -- is based
7 on discovery and information that we have learned during the
8 process of preparing this case. We believe -- and I've
9 discussed with Mr. Scruggs -- that the prosecutors could prove
10 what they say they are proving.

11 Much of that is, as you know, based on testimony of people
12 and under circumstances where Mr. Scruggs was not there and
13 doesn't have firsthand knowledge of it. But we agree that
14 that's what they can prove, and that that's an adequate factual
15 basis for the plea.

16 **THE COURT:** All right. Mr. Scruggs, then, did you do
17 what the prosecutor just said you did, as far as your acts in
18 this charge are concerned?

19 **THE DEFENDANT:** I joined the conspiracy later in the
20 game. It's not exactly as the prosecutor allocuted, in that
21 there was no intent to bribe the judge; it was an intent to
22 earwig the judge, Judge Lackey; and that that -- the earwiggling
23 idea was not originated by me or anyone in our firm, although
24 we went along with it, at the beginning of -- sometime in
25 March.

1 THE COURT: Well --

2 MR. KEKER: But then later -- what about later? You
3 got to say something about later.

4 THE DEFENDANT: I did join the conspiracy after that.

5 THE COURT: So you agree -- are you telling me that
6 you did join the conspiracy, and you did furnish some money to
7 give to Judge Lackey in return for him issuing an order in your
8 favor in this case? Is that what you're saying? Do you
9 disagree with that?

10 THE DEFENDANT: That's what I'm saying.

11 THE COURT: All right. The Court finds, then, that
12 there is a factual basis for this defendant to plead guilty to
13 this charge. Richard Scruggs, do you plead guilty or not
14 guilty to Count 1 of this indictment?

15 THE DEFENDANT: I plead guilty, Your Honor.

16 THE COURT: Since you acknowledge that you are in
17 fact guilty as charged in Count 1; you know what your right is
18 to a trial; you know what the maximum possible punishment is;
19 and then the Court's finding you're also voluntarily pleading
20 guilty; the Court will accept your guilty plea and enter a
21 judgment of guilty on your plea.

22 Now, is there any reason, in the opinion of counsel or the
23 defendant, why the Court should not obtain the customary
24 presentence investigative report prior to sentencing?

25 MR. DAWSON: No, Your Honor.

1 MR. KEKER: No, Your Honor.

2 THE COURT: All right. You're under bond at this
3 time, Mr. Scruggs. If you're allowed to remain under this bond
4 until sentencing, do you agree to remain bound by it and to
5 appear before the Court at such times as the Court might direct
6 in the future?

7 THE DEFENDANT: I do, Your Honor.

8 THE COURT: All right. With that understanding,
9 you'll be allowed to remain under your bond until sentencing,
10 which the Court will not set a specific date on at this time.
11 It will probably be in 30 to 45 days.

12 And also, Mr. Keker, before you leave this morning, let
13 your client talk with the probation officer to start the
14 presentence report.

15 MR. KEKER: Yes, sir.

16 THE COURT: All right.

17 MR. KEKER: And, Your Honor, when the sentencing is
18 set, since I've got to travel, could I consult with somebody
19 about dates? Because I'm going to be starting a trial
20 probably --

21 THE COURT: March 18th?

22 MR. KEKER: Well, no. It's been moved to April 29th
23 or something like that.

24 THE COURT: Okay.

25 MR. KEKER: But I'd just like -- if I can consult so

1 that I can talk to the judge and make sure I can get down here.
2 I'll be in Los Angeles.

3 THE COURT: You'll be given some advance notice.

4 MR. KEKER: All right. Thank you.

5 THE COURT: All right. With that understanding, you
6 gentlemen may be excused; and we'll take up the next case.

7 MR. KEKER: Thank you, Your Honor.

8 MR. DAWSON: Thank you, Your Honor.

9 (THE PLEA ENDED AT 10:29 a.m.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

C E R T I F I C A T E

I, Rita Davis Sisk, RPR, BCR, CSR #1626, Official Court Reporter for the United States District Court, Northern District of Mississippi, was present in court during the foregoing matter and reported said proceedings stenographically.

I further certify that thereafter, I, Rita Davis Sisk, RPR, BCR, CSR #1626, have caused said stenographic notes to be transcribed via computer, and that the foregoing pages are a true and accurate transcription to the best of my ability.

Witness my hand, this 14th day of March, 2008.



RITA DAVIS SISK, RPR, BCR, CSR #1626
Official Court Reporter