

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.	}	
	}	

**SUPPLEMENTAL RESPONSE TO
DEFENDANT'S MOTION TO STRIKE**

Before accepting the appointment as Special Prosecutors, each of the Prosecutors carefully read the pertinent material from the record in E. A. Renfroe & Company, Inc. v. Cori Rigsby Moran and Kerri Rigsby, United States District Court, Northern District of Alabama, Southern Division, Civil Action No.: 2:06-cv-1752. We were convinced that there was probable cause at that time. Subsequent developments have certainly confirmed our original opinions.

Federal criminal law does not have a procedure for Summary Judgment. It is our position that a Motion to Dismiss is only appropriate after the prosecution has presented its full case. The prosecution was allowed thirty minutes to state the highlights of our case as was the defense. This Brief and Supplemental Response is

being submitted to clarify and supplement issues and expected evidence that were raised during the Court's hearing on the 8th day of February 2008.

In order for the court to decide if the Defendants are guilty or not guilty, a full bench trial is necessary. We anticipate no more than a 2 day trial. The charges against the Defendants carry a non-jury maximum sentence of six months imprisonment. The arguments of Scruggs' counsel during our hearing about jury charges have no application. Charges involving defiance of a court order are best understood by the court. The court is in the best position to weigh the Defendants conduct vis a vis the clear mandate of Judge Acker's order.

The "live" in court credibility of the witnesses and evidence addressing the clarity of the order and the facts known to the court and to the Defendants, as well as the Defendants' motive to disobey, can then be fully evaluated and adjudicated on the merits. **This is not a case for the lawyers to do all the talking.**

A court's order can only be as precise as the circumstances it was directed to address. Moreover, this order was directed to sophisticated attorneys, including Scruggs, who are trained to obey court orders and display good faith. It was not directed at ignorant, uneducated persons. Deliberate ignorance by sophisticated and experienced businessmen or professionals is the same as knowledge and intent. Bad faith misinterpretation without seeking clarification evidences intent. The order

expected good faith. The “law enforcement” allowance expected good faith - not a sham.

In Judge Acker’s Memorandum Opinion and Preliminary Injunction entered on December 8, 2006, required Cori Rigsby Moran and Kerri Rigsby, their attorneys, and other persons in active concert or participation who received actual notice with express exception for law enforcement officers, to deliver forthwith to counsel for plaintiff, all documents taken from their employer Renfroe.

By excepting law enforcement officers, Judge Acker was meeting the requirements of the fourth requirement that an injunction not be adverse to the public interest: “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 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.” This paragraph correctly presumes compliance with the preceding paragraph ordering the immediate return of all documents.

The order does not contemplate an avoidance scheme using the Attorney General as cover when the Attorney General already had his own copy of the documents in question, and when Judge Acker’s order specifically included a Protective Order to address any supposed concerns theretofore expressed by the Attorney General.

If there was no request from law enforcement officials for the documents, obviously Scruggs is in violation of the injunction. Exhibit 5 from the Notebook for the February 8, 2008 Hearing, contains the December 17, 2006, 11:50 am email from Courtney Schloemer, Assistant Attorney General, "I did make a request for the documents, but it was conditioned on Judge Acker's agreement to such an arrangement." (Exhibit 4) The Attorney General's office conditioned the request on Judge Acker's agreement as stated by the assistant to whom Hood delegated this matter.

Ms. Schloemer's actual emails to Scruggs, dated December 13, 2006, and December 12, 2006 are also attached (Exhibits 2 and 3). The December 13th email makes it crystal clear that based on their discussion, Scruggs was to obtain Judge Acker's permission. The December 12th email also evidences the sham transaction, because it promises to return the documents to Scruggs.

At the March 19, 2007, Contempt Hearing, Scruggs appeared and answered the following question by Jack Held representing Renfroe: (Exhibit 10)

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.

* * *

Page 133:

Q. Has there been an attorney-client relationship with the Rigsby sisters from February '06 to the present even though that relationship may have changed, in other words, continuous?

A. Yes.¹

Page 142:

Q. So you received the actual injunction, the order on December the 8th?

A. I did. But the same, that it would not go into effect until a bond would have been posted, which had not happened.

Q. Did you get notice of the injunction informing you that the bond had been posted on December 11, 2006, at 4:05 p.m.?

A. No, I did not get it on that day. I got it much, much later. But I assumed that the bond had been posted - -

Page 189:

¹Kerri Rigsby testified as follows in her deposition in Renfroe taken January 26, 2007:
p 14, lines 6-25 and p 142, lines 1-16:

Q. Okay. So now we have the representation dealing with the taking of the documents, and you consider that this additional lawsuit is not involving the taking of the documents?

A. I haven't read the whole lawsuit. I can't speak.

Q. Okay. We've got the first representation that was signed up in February. We've got the second representation that was signed up in April. Now we have a third representation; is that what you're contending, that this new lawsuit is a third representation?

A. It could be. I think of Dick Scruggs – the scope of the way I think of Dick Scruggs is a lawyer. **Anything dealing with the law, that's the scope of how I see Dick Scruggs as well as – and the Katrina group as an employee. But I think of Dick Scruggs as my lawyer. I don't know the different aspects of the law. He's my lawyer. I trust him with my legal issues. Scope, that's the scope of what I'm telling you.**

Q. Well, your lawyer, Mr. Hawley, has taken great pains to distinguish that the scope - the difference in the scope of anything dealing with the documents from the scope of the second matter. Did you consider those to be two different scopes of the lawsuit, two different lawsuits of two different scopes?

MR. HAWLEY:

The April matter, we'll call the second one?

MS. STANLEY:

Q. The April matter.

A. I wouldn't have considered it two different scopes if I hadn't been advised I couldn't talk about it.

Q. *** And if you'll look at the last page, I think you'll see electronically where that was delivered to your office on December 11, as I said, at 4:05 p.m.

A. I cannot argue with that.

Page 197, lines 4-25 and Page 198, lines 1-21:

THE COURT: Well, there seems to be some difference of opinion or understanding of the facts regarding where the genesis was for the idea of delivering all the materials in your possession to the attorney general. I've read in the papers and I can detect two lines of thought. One is that it was the attorney general's idea, which seems to be what you are saying or suggesting, and another that says, no, it was your idea. And there are two ways to interpret the material I have and the evidence I'm hearing.

I could call somebody and say, "Now, if you ask me to send you something, I'm going to send it to you. You've got to understand you are asking me now. Are you asking me?" "Yes, I'm asking you." "Oh good. I'm sending it to you."

And I think that's what Mr. Held's position is, that he's suggesting that the idea of protecting these documents from the purview of the injunction was your idea and not the attorney general's idea. The attorney general had copies. I'm not saying that - - I didn't hear the conversation. You were a part of it. But I think that eventually somebody is going to have to decide whose idea it was. Did you put the bee in his bonnet or did he put the bee in your bonnet?

THE WITNESS: I did not put the bee in his bonnet, but we shared the same bee, that that is fair.

BY MR. HELD:

Q. Well, you thought that if Judge Acker's injunction went into place there on that Friday night, December the 8th, that counsel for

Renfroe would violate that order and make those records available to Renfroe and/or State Farm?

A. Did I believe that?

Q. Yes.

A. I had no doubt that they would.

Q. That they would?

A. Yes.

Q. You had no doubt that my law firm would turn the records over to Renfroe and State Farm in violation of Judge Acker's order. Is that your testimony?

A. I had no doubt - - I didn't know your law firm. I met you today for the very first time and Ms. Stanley as well. I had no knowledge of what you might or might not do. You represented Renfroe, and I didn't know what you would do. I did not trust what you might do or what your obligations were to your client, Renfroe, and their obligations to State Farm. And I did not trust it at the time.

Page 166:

THE COURT: Well, I'm trying to get who she delivered them to and in what sequence. Did she hold them in her house and invite you to come and the U.S. attorney to come and the Mississippi attorney general to come, send a representative, so all of you got there and precisely at the same time, each grabbed your box and left? Now, that's one way to deliver all three at one time.

THE WITNESS: No, Your Honor.

THE COURT: But did she deliver all three to you and then you delivered to the others? That's my question.

THE WITNESS: I had nothing to do until shortly after your injunction with the delivery of those documents to the attorney general or any other law enforcement official.

Mr. Greg Hawley of the firm of White Andrews Arnold & Dowd, represented Rigsby and Moran at the March 19, 2007 hearing. Mr. Hawley's fees were being paid by Scruggs. Mr. Hawley stated on page 260:

MR. HAWLEY: *** "The next point is the injunction was issued on Friday the 8th. You know that. Our law firm sent a copy of the injunction electronically, within 10 minutes of our receipt of it, to The Scruggs Law Firm. You heard about their conversation later that night.

And then on Monday the bond was posted. On Tuesday the record is clear, Ms. Schloemer made a written request, and Mr. Scruggs complied with that request on that very date. So as of 5 p.m."

Pages 264-265:

THE COURT: Well, from what you are saying, you weren't on bended knee begging, which I'm not saying you should have been, but you made it known more than once that you need those records because you've got clients who might be going to jail.

MR. HAWLEY: Yes, sir.

THE COURT: - - and they want the records.

MR. HAWLEY: Yes, sir.

THE COURT: And so finally the day before the moment of truth or any early moment of truth, the attorney general succumbs, and you say it's because they're no longer needed in the grand jury.

MR. HAWLEY: Well, I haven't finished my story yet, Your Honor.

THE COURT: All right. Finish it.

MR. HAWLEY: After they appeared before the grand jury on the 17th, that grand jury went on for the rest of that week. The next week there was an announcement in the press of this global settlement involving State Farm and the criminal prosecution in Mississippi. You heard some testimony about that yesterday.

THE COURT: Yeah.

MR. HAWLEY: And after that settlement was announced, we contacted Ms. Schloemer again and said: Okay. Your case is now settled. Can you give us the documents? And it was the following week that she said, yes, I can. She asked me if I wanted them sent directly to Mr. Held's office or my office. And perhaps as a control freak or just as a good lawyer, I said, I'll tell you what. You FedEx them to me. I'll make sure they are hand-delivered to Mr. Held that day.

THE COURT: So there was no temporal connection between - - or no connection, no causal connection, between the delivery that happened to occur, but it did have some relation to the global settlement which did not come off? ***

THE COURT: Well, it may be that the attorney general made a mistake because now they're in those boxes down there.

MR. HAWLEY: It could be. And again, I can't speak for the attorney general, but the message that I heard here in court in October and we heard prior to the grand jury appearance by the Rigsbys was, "We need to protect state's evidence." After that it was, "Maybe we can give them up." And after the global settlement was announced, "We can certainly give them up, and here they are."

Mr. Hawley refers to Footnote 14 in Renfroe's reply to defendants' written response to the January 19, 2007, order to show cause. Mr. Hawley states on Page 267, "Footnote 14 makes me very curious, to use a word that the court, I think, can

appreciate. The first part of footnote 14 goes into what the contingency fee arrangement or the profit or the money might be made by Mr. Scruggs in the State Farm lawsuits. That's a setup, footnote No. 14. In that context it mentions Mr. Barrett's telephone call that you've heard so much about, and you sort of explained your understanding of why Mr. Barrett might have been calling."

"But, Your Honor, in the middle of the footnote it says, "Scruggs fought surrender." And this is the context of disgorging documents in this injunction. **"Scruggs fought surrender of the documents until the day the settlements were announced."** *** "Renfroe believes that Scruggs knew that the purloined documents might assist in an investigation, but did not, in and of themselves, prove liability" *** "and that's why he worked so hard to keep the documents away from State Farm. If State Farm had seen that the documents were not 'smoking guns,' the settlement total, Renfroe believes, could have been substantially less. Scruggs has profited greatly from violating the injunction."

Then Mr. Hawley stated on page 268, line 22: **"Your Honor, the only inference I can draw from this explanation of Scruggs arguably not complying with this order in order to increase his settlement value of the State Farm settlement is that somehow State Farm would see them."** This is what Scruggs told the court he believed would happen!

II. OTHER EVIDENCE THAT SPECIAL PROSECUTORS MAY PRESENT

Evidence is expected to show that Scruggs and Attorney General Hood were working together. State Farm was being squeezed to settle by the purloined documents and the threat of criminal prosecution, including its President, based on alleged incriminating facts in the purloined documents. Exhibits 5, 6, 7, and 8 discuss the Woullard settlement negotiations culminating with the January 23, 2006 announcement. It is clear that the Rigsbys and the secret documents were central to this strategy. It is also clear that Scruggs made it a condition of the settlement that the Renfroe suit be dismissed. He is inextricably linked with the Rigsby sisters, despite the protestations on non-involvement.

Mr. David Lee Harrell, Esq., Deputy Insurance Commissioner for the State of Mississippi, and career civil servant including work under former Attorney General Mike Moore, gave his deposition in McIntosh v. State Farm, United States District Court, Southern District of Mississippi, Southern Division. Mr. Harrell stated that he attended a meeting on December 15, 2005, which had been called by Scruggs with Commissioner Dale of the Mississippi Insurance Department. He had the sign-in sheet signed by Scruggs as 9:10 on December 15, 2005 and time out is 10:06.

Mr. Harrell testified on page 317: (Exhibit 16)

- Q. And what led into this series of questions was a question about insiders. Did the subject insiders come up during the course of the meeting?
- A. Yes, sir.
- Q. Tell me what you remember about what was said about insiders.
- A. Mr. Scruggs used the terminology.
- Q. He did?
- A. Yes, sir.
- Q. And do you recall what he said when he used the terminology?
- A. Yes.
- Q. What did he say?
- A. He was making a presentation to Mr. Dale and myself regarding why we should make State Farm put up \$500 million for him to administer to pay claims.
- Q. He was making a presentation to you and the Commissioner as to why the Commissioner or Department of Insurance should make State Farm put up a half a billion dollars for him - - for Mr. Scruggs to administer?
- A. To pay claims, yes, sir.
- Q. To pay claims. But for him - - but for Mr. Scruggs, personally to administer?
- A. That's the way we took - - I took the conversation.

Page 320:

- A. He said he was going to do it the same way he did the tobacco case, that he had a couple insiders, high-ranking State Farm representatives working for him as insiders, and he was going to work it the same way he and Mike Moore worked the tobacco case.
- Q. And this was on December 15, 2005?
- A. Yes, sir.²

²On page 133 of the Court's hearing in Renfroe v. Rigsby, Scruggs testified that he first met the Rigsbys in February 2006. The Special Prosecutors believe the evidence will be that, consistent with Mr. Harrell's testimony, is that the Rigsbys began working as "moles" for Scruggs prior to the inception of the Scruggs Katrina Group in Dec. 2005.

Page 321:

Q. Have you subsequently learned who those insiders were?

A. I've learned of some insiders.

Q. The ones you've learned are the Rigsbys?

A. Yes, sir.

Page 322:

Q. What else do you recall about that conversation?

A. He talked about political issues.

Q. What do you mean, political issues?

A. He told Mr. Dale that, George, a lot of people on the coast are calling you the Commissioner for insurance. He talked about how he had always liked Mr. Dale, and had always been there, trying to help Mr. Dale, but if we didn't work with him on this, he was not going to be able to support Mr. Dale in the future, politically.

Page 323:

A. My understanding of the discussion, or my perception of it, was that if Commissioner Dale didn't go along with trying to make State Farm put up \$500 million, that Mr. Scruggs was going to attempt to get Mr. Dale beat.

Page 324:

Q. Did the department insist that State Farm put up the \$500 million for Mr. Scruggs to administer?

A. No, sir. Mr. Dale advised Mr. Scruggs that he didn't think that was legal to do that and, Dickie, you are just going to have to do what you have to do.

Further in the deposition, Harrell was asked on page 326:

Q. Have you had any conversations with former Attorney General Mike Moore about these issues?

- A. Which issues?
- Q. About the Katrina issues - -
- A. Yes.
- Q. Did you work in his office when he was Attorney General?
- A. Yes, sir.
- Q. And you met and talked with, as you say, General Moore. How many times did you do that?
- A. I'm not sure how many times we spoke on the telephone. I know we met a couple different times. I know once in my office and once in General Hood's office.

Page 328:

- Q. Now, what about the meeting with Mr. Moore when it was at Mr. Hood's office? When was it?
- A. Sometime in early 2007 is when.

Page 329:

- Q. In either the meeting where you were meeting with Mr. Moore in Attorney General Hood's office, was Attorney General Hood present?
- A. Yes, sir.
- Q. Was there anybody else there other than yourself, Attorney General Hood and Mr. Moore?
- A. Yes, sir.
- Q. Who else was there?
- A. Mr. Dale, Danny Cupit.

Page 330:

- Q. How long did you all meet that day?
- A. An hour or so.
- Q. In either of these conversations, did any discussion occur with respect to Mr. Moore's work investigating Katrina matters?
- A. Yes.
- Q. Did it occur in both of those meetings or just one?

A. Both.

Page 333:

A. In that meeting, in my office, he said he was helping Jim Hood with the Grand Jury process.

Page 337:

Q. Okay. Do you remember any particular comments that Mr. Moore made in that second meeting?

A. *** That meeting was an attempt to try to figure out if there was a way to bring some type of global resolution settlement involving State Farm and their Mississippi policyholders.

Page 338:

Q. And when he said he wanted them settled, was it your understanding that he was talking about the claims that the Scruggs Katrina Group had?

A. My understanding is he was referencing Mr. Scruggs' claims and his civil lawsuit, and Jim Hood's civil lawsuit.

Page 340:

Q. In that meeting, did Mr. Hood make any representations about any action he would take if the State Farm cases were not settled?

A. It was either in that meeting or in a phone call with General Hood.

Q. A phone call - - either in that meeting or a phone call in which General Hood said what?

A. If they don't settle with us, I'm going to indict them all, from Ed Rust down.

Q. And was that said to you?

A. Yes, sir.³

³In Hood's recent court testimony, he of course denied making such an "unethical" link. He did however, testify about the civil settlement on January 22, 2006 and his agreement executed with State Farm on January 23rd to

Page 341:

- Q. And when he said, if they don't settle with us, who's "they"?
- A. The way I took the conversation, is he was talking about State Farm.
- Q. And the reason you took the conversation that way is because why?
- A. We were dealing with State Farm and Mr. Scruggs' settlement of his lawsuit, General Hood's lawsuit and the proposed class action lawsuit.
- Q. And the proposed class action lawsuit, the Woullard?
- A. Yes, sir.

The Special Prosecutors have also learned of recent sworn testimony by Cori Rigsby Moran and/or Kerri Rigsby, in which it was acknowledged by one or both of these material witnesses, that the **Defendant Scruggs knew of the planned "data dump" weekend in June 2006, before the data dump occurred**, and that it was Scruggs who made pre-arrangements for the Attorney General's office to pick up the documents on that Monday morning. Other witnesses are expected to offer evidence that the weekend before the data dump, that Scruggs arranged for a computer expert to assist Kerri Rigsby with her State Farm laptop. This sworn testimony by colleagues, clients, and employees of Scruggs, given under oath, **contradicts not only their prior testimony, but Scruggs' sworn testimony before this Court.** The truth is finally

terminate all criminal action and cease investigation. Hood testified, "I'll know what kind of case I've got, and then make a decision as to whether or not we should work something out on the criminal case. If you want to talk about the civil case, I'll be glad to do that with you." (Exhibit 13, pp. 143-144)

coming out - that it was Scruggs who helped arrange the “data dump” while suing State Farm, from whom the documents were taken. The government requests the opportunity to obtain a copy of the transcript of this testimony so as to file it with this Court in further proof of what we expect the evidence to show at trial - further evidence of intent. Subpoenas have been issued to obtain the sworn testimony referred to herein.

The government expects to show at trial, based upon recent facts discovered, that Scruggs provided cell phones to the Rigsby sisters, that were in the name of a relative of Scruggs’ legal assistant, in order to attempt to hide communications between Scruggs and the Rigsbys. These furtive actions once again demonstrate the intent of the Defendants to avoid disclosure of their communications and true relationship.

Included in the attachments are excerpts from the recent court testimony of Attorney General Jim Hood in the Federal Court civil suit, State Farm v. Hood. (Exhibit 13) Contrary to the court testimony provided by Scruggs in the Renfro v. Rigsby action, the testimony of Mr. Hood makes it clear that he learned of the court’s injunctive order while on his cell phone driving with his wife from Jackson to Natchez for the weekend on Friday night, December 8th, when Scruggs called him. He

had not seen the injunction prior to that call from his generous benefactor⁴ and it was Scruggs, rather than Attorney General Hood, who therefore made the interpretation that is now being used as a hypothetical excuse for the defiance of the court. Indeed, Hood denies ever seeing or reading the injunction. This is directly contrary to Scruggs' testimony in this case in which he says it was the Attorney General's interpretation of the order and he simply agreed with Hood.

With regard to the pre-knowledge of the data dump weekend, Mr. Hood avoided answering by referring the matter to his assistant, Courtney Schloemer, to whom, from his testimony, he delegated all the responsibilities in connection with this matter. Schloemer is of course, the Assistant Attorney General who wrote the letter attached hereto as Exhibit 3 in which she advised Mr. Scruggs, "Upon reviewing my letter, I see that I was not clear that I propose taking custody of your documents with the permission of Judge Acker. I don't want to thwart him and wind up in an Alabama jail. I don't see how Renfroe could object to that arrangement, but see what

⁴It also came out in Hood's testimony, that in addition to the previously discussed personal contributions, he apparently received \$850,000 from the Democratic Association of Attorneys General and that IRS filings apparently reveal that Scruggs contributed \$300,000 to DAGA in October 2007; Scrugg's former attorney Langston (who recently plead in one of the Mississippi bribery cases involving Scruggs' fee litigation) contributed \$100,000 and other SKG attorneys contributed \$70,000 (Exhibit 13, pp. 140-144).

they say and let me know if you need me to contact any of them to verify my end of it. Thanks, Courtney.” This was sent on December 13, 2006, at 10:48 am.⁵

It is clear from the attachments, including Exhibit 8, a letter dated February 19, 2007, from Scruggs to State Farm, that one of his demands with regard to the Woullard class action settlement was that the Renfroe case must be dismissed. In other words, Scruggs linked the Renfroe v. Rigsby case to his class action settlement that was being negotiated during the time frame of the initial defiance of Judge Acker’s order from December 8th until February 1, 2007.

Group Exhibits 14 and 15 further indicate that the violation of the court’s injunctive order continued for a lengthy period of time thereafter, including Scruggs’ withholding of documents with the excuse that he believed that Judge Acker’s order did not include documents that had been submitted in connection with the Qui Tam case. That is clearly not the case. These documents are in addition to evidence that other SKG attorneys retained electronic and/or hard copies of the documents which evidence will show was known to Scruggs.

⁵Scruggs of course did not contact Renfroe to obtain its consent. This is because the Rigsbys continued to conceal that Scruggs, and not themselves, had the documents.

THE DEFENDANT'S RELIANCE ON THE LANGUAGE IN THE OPINION OF THE ELEVENTH CIRCUIT IS MISPLACED BECAUSE THE LANGUAGE WAS IN RESPONSE TO A FRAUD UPON THE COURT.

We have already made our arguments that the language in the injunction and the opinion of the Eleventh Circuit does not support the defendant's interpretation of the injunction nor did the Eleventh Circuit even address Scruggs' conduct or the context of such conduct vis a vis the contrary intent of the "law enforcement" provision. More troubling, however, is the evidence proving that the language in the opinion was in response to a false construct presented for the purposes of deceiving the court. The evidence is found in the record, and introduces us to a breathtaking contempt of the judicial system and a party's obligations of candor. This is the timeline:

1. On September 1, 2006, the Renfroes filed the underlying suit against the Rigsbys demanding the return of purloined documents.
2. On October 2, 2006, the Rigsbys filed a 30 page answer. **Nowhere did they claim they did not have the documents and so could not return them.**
3. On October 26, 2006, the Renfroes moved for a preliminary injunction. There followed various hearing and pleadings. At no time did the Rigsbys claim that they did not have the documents.
4. On December 8, 2006, the district court entered the preliminary injunction requiring the delivery of the documents to counsel for Renfroes.

5. On December 15, 2006, the Rigsbys filed a motion to stay enforcement of the injunction. Nowhere did they claim they did not have the documents. Instead, they claimed that they had been subpoenaed by the Mississippi Attorney General to “bring these documents and testify before a Mississippi Grand Jury,” and that if they were forced to comply with the injunction before doing so they would be prosecuted by the Mississippi Attorney General (an absurd claim).⁶
6. On December 14, 2006, the Rigsbys filed a notice of appeal of the injunction, and a motion to stay enforcement pending the appeal.
7. On December 18, 2008, the District Court denied the motion to stay.
8. On December 22, 2006, the Rigsbys designated the record on appeal.
9. On January 5, 2007, Renfroe filed a motion in District Court for an order to show cause why the Rigsbys should not be held in contempt.
10. On January 11, 2007, the Rigsbys, having been forced into a corner, filed a response to the motion for a show cause order. They claimed, for the first time, that “**The Rigsbys do not have documents subject to the injunction in their possession and have not had the documents since before the injunction was issued.**”

Remarkably, even though (if the Rigsbys were being truthful) they were not able to comply with either the injunction of the state subpoena, they continued to argue in the appeal that compliance with the injunction would expose them to criminal liability for non-compliance with the subpoena. The record before the Eleventh Circuit does not even disclose that the Rigsbys had given Scruggs the very documents in question.

⁶ This is the same Attorney General who later advised the United States Attorney, in an effort to dissuade her from prosecuting Scruggs for contempt, and Scruggs was a “confidential informant”. We have already argued that the assertion of such a threat, by both the Rigsbys and the Attorney general, was, at the least, dishonest.

There is simply no way that Scruggs can legitimately argue that the Renfroe v. Rigsbys opinion by the Eleventh Circuit is the law of the case in US v. Scruggs. Indeed, the opinion inferred that the Rigsbys appeal was frivolous. Moreover, the Eleventh Circuit denied basically the same arguments that Scruggs is making in this case when it denied Scruggs' Petition for Extraordinary Writ.

CONCLUSION

The Defendants have offered no rebuttal whatsoever to the fact that Scruggs substituted his judgment that Renfroe's lawyers would violate the court's order when he made the determination to ignore the Protective Order provision and disobey the order.

As both the prosecution and the defense argued in the recent hearing, the circumstances surrounding the entry of the injunctive order on December 8, 2006, are relevant and helpful for an understanding as to the charges of criminal contempt and the Defendants' intent to defy the court's order. Material evidence in the case includes testimony and documents which would show a motive and intent on the part of the Defendants to violate the court's order. Attached hereto as Exhibits 1 through 16, are various emails, correspondence and excerpts from testimony which are relevant and material to the Defendant's intent. This additional evidence also offers a further showing of evidence which the United States would expect to present at trial of the

close connection between the Defendants and the Attorney General's office which was working with the Defendants. The prosecution expects further evidence will come from subpoenas, including the one to the Defendant's firm.

While Judge Acker's injunctive order was clear that first, the Defendants, including Scruggs, were ordered to immediately return all of the purloined documents, the evidence which the Special Prosecutors expect to present at trial will prove that the delivery to the Attorney General's office without seeking permission of the court, with the excuse that it was a delivery to law enforcement, was a sham because that was not the purpose. Moreover, as indicated earlier, Paragraph 2 of the injunctive provisions did not authorize delivery of documents to Attorney General Hood's office which he already had and that provision must be read in context of the briefs in the underlying Renfroe v. Rigsby case in connection with the grand jury subpoenas and expected testimony of the Rigsbys.

WHEREFORE, PREMISES CONSIDERED, the Special Prosecutors request that the court deny the Defendant's Motion to Dismiss and set this matter for arraignment and further discovery.

Respectfully submitted:

s/Charles E. Sharp, Sr.
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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on the **26th** day of February, 2008, I have caused a copy of the above and foregoing **Supplemental Response of United States of America to Defendants' Motion to Dismiss** to be delivered for service upon the following:

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