

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION**

UNITED STATES OF AMERICA

v.

Case No.: 3:07CR192-NBB-SAA

RICHARD F. SCRUGGS,
DAVID ZACHARY SCRUGGS,
SIDNEY A. BACKSTROM

**DECLARATION OF BROOK DOOLEY IN SUPPORT OF DEFENDANTS' MOTION
TO DISMISS THE INDICTMENT FOR OUTRAGEOUS GOVERNMENT CONDUCT
AND DEFENDANTS' MOTION TO SUPPRESS THE FRUITS OF ILLEGAL
WIRETAPS AND SEARCHES**

I, BROOK DOOLEY, declare as follows:

I am an associate in the law firm of Keker & Van Nest, LLP, attorneys for Richard F. Scruggs in the above-captioned case. Except where specifically stated below, I have knowledge of the facts set forth herein and if called to testify as a witness thereto could do so competently under oath.

1. Based on the recordings produced by the government, between their May 4, 2007 telephone call and the September 21, 2007 meeting at which Judge Lackey demanded \$40,000 from Balducci, Judge Lackey called Balducci no fewer than seven times. Based on the recordings produced by the government, Balducci did not call Judge Lackey once during the same time.

2. Based on the recordings produced by the government, after Judge Lackey issued his letter to the parties to the Jones case announcing that he intended to recuse himself from hearing the case, Balducci did not call Judge Lackey to ask about the recusal or to ask that he reconsider. The two did not speak for eight days.

3. On May 29, 2007, Judge Lackey called Balducci. This call was recorded. Judge Lackey explained that he had recused himself because he had been seen at a court function speaking with a member of the Daniel Coker firm, which represented the defendants in the *Jones* case. Balducci did not try to dissuade Judge Lackey or otherwise convince him to stay in the case. To the contrary, Balducci told Judge Lackey that he should “do what your heart tells you.”

4. Based on the recordings produced by the government, Judge Lackey initiated every communication with Balducci between May 4, 2007 and September 18, 2007. On May 25, 2007, Judge Lackey called Balducci. On May 29, 2007, Judge Lackey called Balducci. On May 30, 2007, Judge Lackey drove to New Albany, Mississippi, for lunch with Balducci.

5. Based on the recordings produced by the government, Balducci first talked to Judge Lackey about his recusal eight days after his March 21, 2007 notice when Judge Lackey called him on May 29th.

6. Based on the recordings produced by the government, on June 28, 2007, Judge Lackey dropped in on Balducci at his office unannounced while wearing a body wire to record his conversation.

7. The Government has not produced a draft transcript of the May 29, 2007 recording between Judge Lackey and Balducci to date. I listened to the audio file and to the best of my ability transcribed the conversation between Balducci and Judge Lackey on May 29, 2007, as reflected in the Motion.

8. Based on the recordings produced by the government, on November 13, 2007, the government directed Balducci to make a recorded call to Backstrom at the Scruggs Law Firm.

9. The Electronic Surveillance Logs for the Balducci and Patterson wiretaps produced by the government also show other conversations between Balducci and defendants recorded pursuant to the September 25, 2007 wiretap application.

10. Based on the recordings produced by the government since September 26, 2007, the government intercepted and records 12 conversations between Balducci and defendants and 4

conversations between Patterson and defendants. Among these recordings are records of Patterson speaking to Richard F. Scruggs on October 18, 2007 and November 1, 2007.

11. Attached hereto as **Exhibit 1** is a true and correct copy of the Complaint for Damages and Declaratory Relief filed in *Jones, Funderburg, Sessums. Peterson & Lee, L.L.C. v. Scruggs et al.* filed on March 15, 2007

12. Attached hereto as **Exhibit 2** is a true and correct copy of a letter from Grady F. Tollison Jr. to Richard Scruggs, Don Barrett, David Nutt, and Dewitt Lovelace enclosing the Complaint filed dated March 15, 2007.

13. Attached hereto as **Exhibit 3** is a true and correct copy of an Order re Filing the Complaint under seal dated March 15, 2007.

14. Attached hereto as **Exhibit 4** is a true and correct copy of Defendants Motion to A) Dismiss, or in the Alternative to B) Compel Arbitration, and C) Extend Order Requiring Filings to remain Under Seal dated March 19, 2007.

15. Attached hereto as **Exhibit 5** is a true and correct copy of a Daily Journal Article entitled, “ Balducci: The Eye of a Legal Storm” dated December 22, 2007.

16. Attached hereto as **Exhibit 6** is a true and correct copy of the

17. Attached hereto as **Exhibit 7** are true and correct copies of excerpts from the Change of Plea Hearing as to Count One dated January 15, 2008.

18. Attached hereto as **Exhibit 8** is a true and correct copy of an article from the Wall Street Journal entitled “How Scruggs Case Came Together” dated November 30, 2007.

19. Attached hereto as **Exhibit 9** is a true and correct copy of the William P. Delaney Affidavit filed in support of Application for Interception of Wire Communications dated September 26, 2007.

20. Attached hereto as **Exhibit 10** is a true and correct copy of a transcript from the recorded telephonic conversation between Henry Lackey and Tim Balducci on May 4, 2007. Transcription occurred on June 5, 2007.

21. Attached hereto as **Exhibit 11** are true and correct copies of excerpts from the recorded telephonic conversation between Henry Lackey and Tim Balducci on August 3, 2007; August 9, and August 27, 2007. Transcription occurred on November 14, 2007.

22. Attached hereto as **Exhibit 12** is a true and correct copy of a transcript from the recorded telephonic conversation between Henry Lackey and Tim Balducci on September 18, 2007. Transcription occurred on September 20, 2007.

23. Attached hereto as **Exhibit 13** is a true and correct copy of a transcript from the recorded telephonic conversation between Henry Lackey and Tim Balducci on May 21, 2007. Transcription occurred on June 5, 2007.

24. Attached hereto as **Exhibit 14** is a true and correct copy of a fax letter from Henry Lackey to Larry D. Moffett and Grady F. Tollison Jr. re recusal dated May 21, 2007.

25. Attached hereto as **Exhibit 15** is a true and correct copy of a fax letter from Henry Lackey to Larry D. Moffett and Grady F. Tollison re recusal dated June 4, 2007.

26. Attached hereto as **Exhibit 16** are true and correct copies of excerpts from the recorded telephonic conversation between Henry Lackey and Tim Balducci on September 21, 2007. Transcription occurred on September 24, 2007.

27. Attached hereto as **Exhibit 17** is a true and correct copy of a transcript from the recorded telephonic conversation between Henry Lackey and Tim Balducci on September 24, 2007. Transcription occurred on October 29, 2007.

28. Attached hereto as **Exhibit 18** are true and correct copies of excerpts from the recorded telephonic conversation between Henry Lackey and Tim Balducci on September 27, 2007. Transcription occurred on October 4, 2007.

29. Attached hereto as **Exhibit 19** is a true and correct copy of the William P. Delaney Affidavit filed in support of Application for Interception of Wire Communications dated October 16, 2007.

30. Attached hereto as **Exhibit 20** is a true and correct copy of the Application and Affidavit for Search Warrant re The Scruggs Firm P.A. filed on November 16, 2007.

31. Attached hereto as **Exhibit 21** is a true and correct copy of a letter from David A. Sanders to the Honorable Hiram Eastland, Jr. et al. dated December 26, 2007.

32. Attached hereto as **Exhibit 22** are true and correct copies of excerpts from the recorded telephonic conversation between Henry Lackey and Tim Balducci on May 9, 2007. Transcription occurred on June 5, 2007.

33. Attached hereto as **Exhibit 23** is a true and correct copy of a transcript from the recorded telephonic conversation between Henry Lackey and Tim Balducci on September 11, 2007. Transcription occurred on January 18, 2008.

34. Attached hereto as **Exhibit 24** is a true and correct copy of excerpts from the Hearing Transcript dated July 17, 2007.

35. Attached hereto as **Exhibit 25** is a true and correct copy of the Application and Affidavit for Search Warrant re The Scruggs Firm P.A. filed on November 26, 2007.

36. Attached hereto as **Exhibit 26** is a true and correct copy of the United States Attorney's Application for Interception of Wire Communications, filed September 25, 2007.

37. Attached hereto as **Exhibit 27** is a true and correct copy of the Order Authorizing the Interception of Wire Communications, filed September 25, 2007.

38. Attached hereto as **Exhibit 28** is a true and correct copy of the United States Attorney's Application for Interception of Wire Communications, dated October 16, 2007.

39. Attached hereto as **Exhibit 29** is a true and correct copy of the Order Authorizing the Interception of Wire Communications, filed October 16, 2007.

40. Attached hereto as **Exhibit 30** is a true and correct copy of the United States Attorney's Extension Application, filed October 24, 2007.

41. Attached hereto as **Exhibit 31** is a true and correct copy of the Affidavit of William P. Delaney in support of the United States Attorney's Application for an Extension of Order Authorizing Interception of Wire Communications, dated October 24, 2007.

42. Attached hereto as **Exhibit 32** is a true and correct copy of an Order re Continuing Authorization dated October 24, 2007 in the United States District Court, Northern District of Mississippi.

43. Attached hereto as **Exhibit 33** is a true and correct copy of the Search Warrant in the Matter of the Search of The Scruggs Firm, P.A., filed November 16, 2007.

44. Attached hereto as **Exhibit 34** is a true and correct copy of the Search Warrant in the Matter of the Search of The Scruggs Firm, P.A., filed November 26, 2007.

45. Attached hereto as **Exhibit 35** is a true and correct copy of a transcript from the recorded telephonic conversation between Tim Balducci and Steve Patterson on September 27, 2007. Transcription occurred on September 27, 2007.

46. . Attached hereto as **Exhibit 36** is a true and correct copy of a transcript from the recorded telephonic conversation between Tim Balducci and Henry Lackey on October 10, 2007. Transcription occurred on October 11, 2007.

47. Attached hereto as **Exhibit 37** is a true and correct copy of a transcript from the recorded telephonic conversation between Tim Balducci and Sid Backstrom on October 31, 2007. Transcription occurred on January 24, 2008.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct. Executed this 11th day of February, 2008 in San Francisco, California.

/s/ Brook Dooley
BROOK DOOLEY

CERTIFICATE OF SERVICE

I, Brook Dooley, do hereby certify that I have electronically filed the foregoing **Declaration of Brook Dooley in Support of Defendants' Motion to Dismiss the Indictment for Outrageous Government Conduct and Defendants' Motion to Suppress the Fruits of Illegal Wiretaps and Searches** with the Clerk of the Court using the ECF system, which sent notification for such filing to Thomas W. Dawson, Assistant United States Attorney, Robert H. Norman, Assistant United States Attorney, David Anthony Sanders, Assistant United States Attorney, Frank W. Trapp, J. Rhea Tannehill, Jr., Nathan F. Garrett, and Todd P. Graves.

This, the 11th day of February, 2008.

/s/ Brook Dooley
Brook Dooley