

UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF MISSISSIPPI

UNITED STATES OF AMERICA

v.

CRIMINAL CASE NO. 3:07CR192

RICHARD "DICKIE" SCRUGGS,
DAVID ZACHARY SCRUGGS,
SIDNEY A. BACKSTROM,
TIMOTHY R. BALDUCCI,
STEVEN A. PATTERSON

**MOTION FOR ANONYMOUS JURY, OR IN THE ALTERNATIVE,
A DISTRICT-WIDE AND SEQUESTERED JURY**

Comes now the United States of America, by and through the United States Attorney's Office for the Northern District of Mississippi, and moves the Court to consider a anonymous jury in the trial of the above-captioned case, or in the alternative, a district-wide and sequestered jury.

Background

Nationally prominent tort lawyer Richard F. "Dickie" Scruggs and two other members of The Scruggs Law Firm, including Scruggs' son, David Zachary Scruggs, were indicted on November 28, 2007, on a six-count indictment charging one count of conspiracy to corruptly influence a judicial officer of the State of Mississippi, in violation of Title 18, United States Code, Section 666(a)(2), and three substantive counts of Title 18, United States Code, Section 666(a)(2) for attempted judicial bribery and two additional counts of honest services wire fraud, in violation of Title 18, United States Code, Sections 1343 and 1346. There has been considerable pretrial publicity as is reflected by the defendants' Motion for a Change of Venue. While that motion did not rise to the level of requiring a change of venue and was denied by this Court, less onerous avenues to ensure a fair trial for all parties are available to the Court. These

alternatives will be discussed below:

Anonymous Jury

Title 28, Section 1863, states in pertinent part that a plan for random jury selection shall:

fix the time when the names drawn from the qualified jury wheel shall be disclosed to parties and to the public. If the plan permits these names to be made public, it may nevertheless permit the chief judge of the district court, or such other district court judge as the plan may provide, to keep these names confidential in any case where the interests of justice so require.

28 U.S.C. § 1863(b)(7).

Referring to the jury as “anonymous” can be misleading. Anonymity has long been an important element of our jury system. Jurors are randomly summoned from the community at large to decide the single case before them and, once done, to “inconspicuously fade back into the community.” United States v. Branch, 91 F.3d 699, 723 (5th Cir. 1996), citing United States v. Scarfo, 850 F.2d 1015, 1023 (3d Cir.), cert. denied, 488 U.S. 910 (1988). “Anonymous jury” has come to mean something different in recent years, signaling the district court’s decision to withhold certain biographical information about potential jurors from the parties involved. In deciding whether to empanel an anonymous jury, the “interest in juror protection must be balanced against the defendant’s interest in effective voir dire and the presumption of innocence.” United States v. Edwards, 303 F.3d 606, 613 (5th Cir. 2002). The decision to empanel an anonymous jury is within the sound discretion of the district court and is reviewed for an abuse of discretion. Edwards, Ibid. at 613. And is reviewed for an abuse of discretion. United States v. Brown, 303 F.3d 582, 601 (5th Cir. 2002). There are varying degrees of anonymity when considering an anonymous jury, for example, see United States v. Ross, 33 F.3d 1507, 1519 (11th Cir. 1994) (withholding names, addresses, places of employment, and spouses

names and places of employment), cert. denied, 515 U.S. 1132 (1995). On the other hand, jurors have been “anonymous” only in the most literal sense. United States v. Branch, 91 F.3d 699, 723 (5th Cir. 1996) (the district court ordered only the jurors’ names and addresses to be withheld from the parties, otherwise the court provided the defendants with a wealth of information about the venire including occupations and names of employers).

In considering whether or not to order some form of an anonymous jury, the Fifth Circuit has generally set forth factors supporting such a decision which include:

- (1) The defendant’s involvement in organized crime;
- (2) The defendant’s participation in a group with the capacity to harm jurors;
- (3) The defendant’s past attempts to interfere with the judicial process or witnesses;
- (4) The potential that if convicted the defendants will suffer a lengthy incarceration and substantial monetary penalties; and
- (5) The extensive publicity that could enhance the possibility that jurors’ names would become public and expose them to intimidation and harassment. United States v. Edwards, Ibid. and United States v. Brown, Ibid. (citing United States v. Krout, 66 F.3d 1420, 1427 (5th Cir. 1995).

The Fifth Circuit has not suggested, however, that “these or some aggregate must be established on pain of reversal.” United States v. Branch, Ibid. Obviously, numbers (1) and (2) above have no application to the instant case; however, the indictment itself deals with attempts to corrupt the judicial process, if convicted defendants will suffer length incarceration and substantial monetary penalties, and there has been extensive publicity pretrial that will undoubtedly continue during the trial as the evidence unfolds. Given the nature of the charges,

the immense resources of the defendants, and the penalties at stake, further potential compromising of the judicial process cannot be discounted. It should be noted, however, that in circumstances where the factors did not justify an anonymous jury that an abuse of discretion will be found. See United States v. Sanchez, 74 F.3d 562, 564-65 (5th Cir. 1996). In Sanchez, jury selection took place ten days prior to the evidentiary phase of the trial because the trial judge attended a judicial conference. The court, in the intervening ten days before the trial began, ordered that all identifying information about prospective jurors be redacted from the information provided to the parties. None of the factors normally considered were found to be present in Sanchez. If the Krout factors, as reiterated in Edwards and Brown, or other factors that argue for protection of the jury can be found. And balanced against the interest of the defendants, some degree of anonymity can be justified within the discretion of the trial court. Moreover, additional protections for the defendants may be secured with the use of judicially approved jury questionnaires; see Edwards, *supra*.

Sequestration

As with anonymity, sequestration and the selection of a district-wide jury are within the sound discretion of the trial court. United States v. Greer, 806 F.2d 556 (5th Cir. 1986); United States v. Hill, 596 F.2d 201 (5th Cir. 1974). Since sequestration and/or a district-wide jury do not involve redacting of information in the normal process of jury selection, the exercise of discretion involves much less scrutiny. It is submitted that sequestration and a district-wide jury would act as a protective measure both to pretrial publicity as well as trial publicity as the evidence is presented on a daily basis.

Conclusion

The Court has available various alternatives to secure a fair trial for all parties in the circumstance of a highly publicized and intensely followed trial involving the criminal prosecution of national renowned defendants. Any decision by the Court will be reviewed by an abuse of discretion standard. With appropriate findings set forth by the Court, it is difficult to conclude that the Court's decision would be disturbed. At the very least, if the Court was not convinced that some form of anonymity was appropriate, that a sequestered district-wide jury would be warranted, and such is requested.

Respectfully submitted,

JIM M. GREENLEE
United States Attorney

/s/ Thomas W. Dawson

By:

THOMAS W. DAWSON
First Assistant United States Attorney
Mississippi Bar No. 6002

/s/ Robert H. Norman

By:

ROBERT H. NORMAN
Assistant United States Attorney
Mississippi Bar No. 3880

/s/ David A. Sanders

By:

DAVID A. SANDERS
Assistant United States Attorney
Mississippi Bar No. 10535

CERTIFICATE OF SERVICE

I, THOMAS W. DAWSON, First Assistant United States Attorney, hereby certify that I electronically filed the foregoing **MOTION FOR ANONYMOUS JURY, OR IN THE ALTERNATIVE, A DISTRICT-WIDE AND SEQUESTERED JURY** with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

wbraunig@kvn.com

bdooley@kvn.com

eastlandlaw@bellsouth.net

ngarrett@gbmkc.com

todd.graves@pobox.com

jkeker@kvn.com

tleblanc@kvn.com

jlittle@kvn.com

rmichael@rmichaellaw.com

chrisrobertson@scruggsfirm.com

jrt@tannehillcarmean.com

trappf@phelps.com

This the 21st day of February, 2008.

/s/ Thomas W. Dawson
THOMAS W. DAWSON
First Assistant United States Attorney