

**Book Review: *Kings of Tort*
By Alan Lange & Tom Dawson
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David Rossmiller

The career of fabled tort lawyer Richard F. “Dickie” Scruggs provides one of the better arguments for the truth of Marx’s dictum that events and people come along twice in history, the first time as tragedy, the second as farce.

Marx famously applied his biting sarcastic maxim, set forth in his 1852 essay *The Eighteenth Brumaire of Louis Bonaparte*,¹ to the seizure of power by Napoleon Bonaparte followed 52 years later by the *coup d’etat* of his nephew Louis-Napoleon. Similarly, Dickie Scruggs made, as it were, two appearances in history – the first as the Napoleon who conquered Big Tobacco, the second as a caricature of himself, a stumblebum unable to deliver a punch or take one, surrounded by a posse of chuckleheads, a man who besides making himself look ridiculous also outed himself as the stereotypically crooked lawyer. History, tragedy and farce, indeed. And, currently sitting in a federal prison in Ashland, Kentucky, the end of history for Scruggs.

Scruggs had a pretty good, and long, ride posing as a tribune of the people in asbestos and tobacco litigation, among other ventures, where he accumulated a reported \$1 billion in attorney fees. Not every one of Scruggs’ legal campaigns was an unqualified success, of course, but let’s not argue with the proposition that a guy who put together a billion-dollar stash did well for himself, and had something going for him besides dumb luck. If Scruggs were writing his own story, which he did for a long time with the help of public relations professionals, he would say he did well by going good, and this is in fact the image Scruggs sold to many in the news media who were either gullible, ideologically simpatico or just intellectually incurious. But, even before the feds closed in and ran him to ground, Scruggs had pretty much lost control of his own narrative during his disastrous foray into insurance litigation in the aftermath of Hurricane Katrina, where he was finally caught out. The State Farm insurance company, his Katrina *bête noire*, figured out Scruggs’ *shtick*. I’ve never asked the people at State Farm about this, just as I’ve never asked Scruggs, but from my daily observation of Katrina litigation, I would say State Farm, among others, came to understand several things about Scruggs – (1) Plan A had worked so well for Scruggs in the past that if Plan A didn’t work he had no Plan B, (2) he was a showman for whom bluffing was not only a habit but a kind of inside joke, (3) although he liked to portray himself as a heroic figure who was down for the struggle, Scruggs acted consistently with his own personal business interests at all times, (4) the crews Scruggs assembled to pursue his Katrina venture included a number of people who were weak links cognitively and otherwise, and (5) Scruggs was a great hunter but he didn’t make good decisions when the quarry started shooting back, and neither did much of his crew.

¹ Karl Marx, *The Eighteenth Brumaire of Louis Bonaparte* (1852), available at <http://www.marxists.org/archive/marx/works/1852/18th-brumaire/index.htm> (last visited Sept. 22, 2010).

Of course, what undid Scruggs was not his Katrina litigation *per se*, but rather a dispute he had with another law firm over dividing up attorney fees from money received from State Farm in settlement of a group of Katrina cases. That, and the fact that he tried to put a thumb on the scale of this fee dispute case by bribing the judge, plus the fact that the judge reported this to federal investigators. And also that it came out in the investigation that Scruggs influenced the judge in an earlier case where he was disputing attorney fees from asbestos cases with another lawyer. This is what nailed Scruggs’ hide to the barn wall. But, putting aside the criminality for which he was busted, Scruggs’ formula for litigation as a business venture didn’t pan out in Katrina litigation the way he would have expected, based on his track record.

The reasons include the five characteristics and tendencies I identified above – there could be others – but the important point to derive from this is that Scruggs, like almost everyone else in the world, is a creature not merely of habit, but of the limitations of his own experience, background and thinking. Narcissism and provincialism are chains that have long bound the human race, and it is difficult indeed to get free of them. One does not have to buy Marx’s historical materialism *in toto* to admit the man may have had a point when he wrote, also in *Eighteenth Brumaire*, “Men make their own history, but they do not make it as they please; they do not make it under self-selected circumstances, but under circumstances existing already, given and transmitted from the past.”² If so, that explains why, in a reversal of the old hair-of-the-dog formulation, what made Scruggs well is what eventually made him sick. It wasn’t so much that the poison was in the dose – that Scruggs OD’d on Scruggsism. It wasn’t so much that Scruggs, like a guy who blows through every stop light, eventually got T-boned. No, I think in this case Marx was right, and that his explanation fits the best with the available evidence. Circumstances changed, but Scruggs didn’t, because he didn’t feel the ground shift. Remember, Marx was not a determinist. He did not believe in a pre-destined fate, and so under his transmitted-past theory it was not inevitable that Scruggs come to ruin. Scruggs could have done other than what he did. But he couldn’t see why he should.

In the broad scheme of things, Scruggs’ use and misuse of a combination of litigation, politics, self-promotion and public relations, appeals to naked self-interest masked as altruism and whatever-it-takes rule-bending and -breaking is the real story – a toxic smorgasbord we might call Scruggsism – not merely the fact that a famous guy got pinched for rigging the scales. The story of Scruggs and Scruggsism has broad implications for American legal culture, and although we receive a certain *schadenfreude* from the details of some elite celeb miscreant like Winona Rider getting bagged by the rozzers and frog-marched like a commoner for taking a five-finger discount, there is much more at play in the Scruggs story than morbid fascination.

A new book on Scruggs called *Kings of Tort*³ gives us reason to think once again of Scruggs, who went to prison in 2008. The authors of this book provide a valuable service by examining Scruggs’ rise and fall, and although there is a decided emphasis on the fall with more than half the book’s 255 pages devoted to Scruggs’ prosecution, their cataloguing of his methods on the way up effectively foreshadows his end, and makes us unsurprised – even if we did not know how the story ends – that Scruggs went out the way he did. The authors are Alan Lange,

² MARX, *supra* note 1.

³ ALAN LANGE & TOM DAWSON, *KINGS OF TORT* (2009).

proprietor of the Y'all Politics blog⁴ in Mississippi, and Tom Dawson, a recently retired federal prosecutor who played a major role in investigating and prosecuting Scruggs. It should be mentioned that I do not know Dawson, but Lange is a friend of mine, and we communicated pretty often about the Scruggs scandal and prosecution, and about Scruggs' earlier role in Katrina civil litigation. One can also see in the book's credits that the authors cited posts and materials from my blog, Insurance Coverage Blog,⁵ and I am mentioned once or twice in the book. However, although I was aware they were working on a book, I did not speak to them about it or have any role in its creation or writing.

One strength of this book is that the authors play it straight, with a minimum of editorializing and restrained use of adjectives. This is the right decision for a book that is mainly about the criminal investigation and prosecution of Scruggs, with abundant material about Scruggs' earlier career and Katrina litigation presented to provide the context that Scruggs had certain operational conventions and parameters that, we are not shocked to discover later, were flexible enough to include bribing a judge or two. This is, in other words, a book that takes Scruggs, and his crimes, seriously, which is what you would expect from a book co-written by one of the people who put Scruggs behind bars. There is more than one legitimate interpretation of Scruggs, however, depending on what one focuses on, and I have long seen it somewhat differently.

One can summon a fair amount of outrage at Scruggs' practices and procedures, and exploring them in serious tones is one option, but I think the person best equipped to give the definitive interpretation to the last chapter of the Scruggs saga, and possibly his entire career, is the actor, director and producer Mel Brooks. I have often blogged in jest about a stage musical I pretend to be working on called *The Katrina Follies*, where the Scruggs farce plays out in a series of slapstick scenes interspersed with hilarious, well-choreographed musical dance numbers, inspired by classic Brooks such as the song "Prisoners of Love" from the final prison scene in *The Producers*⁶ ("prisoners of love, blue skies above, can't keep our hearts in jail"), "Springtime for Hitler" from the same movie, or the "de Camp Town Ladies" redneck dance scene from *Blazing Saddles*.⁷ There is, after all, only so much outrage a person can maintain, and often the best thing to do with outrageously pompous and nasty behavior is to laugh in its face. Many a true word is said in jest, and there was good reason for the demagogues of Athens to fear and loathe Aristophanes and his comedies. (Of course, I am not directly comparing Brooks and Aristophanes – Brooks is much funnier.) This production better get made quick, while Brooks is still around to direct it and Gene Wilder is still here to play Scruggs.

There is a great deal about Scruggs' involvement in Katrina litigation, and even the judicial bribery, that is laughable. Consider this storyline:

Just days after Hurricane Katrina hits, and before any property damage claims at all have been adjusted, Scruggs and Attorney General Jim Hood are involved in circulating a letter to

⁴ Y'all Politics, <http://yallpolitics.com/index.php>.

⁵ Insurance Coverage Blog, <http://www.insurancecoverageblog.com>.

⁶ THE PRODUCERS (Embassy Pictures 1968).

⁷ BLAZING SADDLES (Warner Bros. 1974).

select members of the trial lawyer bar outlining the attack on the insurer misconduct and fraud *that has not yet happened*. Scruggs rounds up lawyers to form a group to take on these insurers, and going back to the Big Tobacco litigation playbook, recruits "insiders" Kerri and Cori Rigsby, who work for a State Farm contractor, to steal documents supposed to be the centerpiece in a federal False Claims Act⁸ case claiming insurers ripped off taxpayers by falsely denying wind damage the insurers should have paid for, and while shirking their responsibilities, causing the government to wrongly pay out federal flood insurance money. But whoops! In the centerpiece case in this scenario, *Kerri Rigsby herself actually approved the flood insurance payment!* Ouch.

Kerri and Cori hold a "data dump" weekend with a few friends, where they copy off stolen documents, and Attorney General Hood, the state's chief law enforcement officer, sends someone to pick them up like he's operating a laundry service! These documents, as it turns out, are basically completely worthless and a big bluff to fool the media, which, prompted by a high-powered Washington, D.C. public relations firm, does story after story buying into the Scruggs story. Scruggs even flies to Bloomington, Illinois, and pretends to meet a "whistleblower" at the airport with an envelope of more worthless paper, just to spook his opponents and further gull the media.

Hood starts a criminal investigation of insurers, based in large part on this Rigsby "whistleblowing."

The Rigsbys, fresh from the job where they stole documents, and despite the fact they are to be material witnesses to alleged insurer fraud, are hired by Scruggs at \$150,000 a year for doing essentially nothing, giving Kerri time to wonder if Sandra Bullock will play her in the movie about these exploits. But things start to go awry when the Rigsbys get sued by their employer, and a federal judge holds Scruggs in contempt for refusing to turn over the documents the Rigsbys gave him. To avoid doing so, he sends his copies to Hood, who didn't need them *because he already had his own set that he sent a car to pick up!*

Meanwhile, Scruggs settles a bunch of insurance cases for \$26 million or so, but there is disagreement about how to divide it, and ironically, lawyers who had represented Scruggs in an earlier attorney fee dispute he had with other lawyers over asbestos litigation money get the short end, sue Scruggs and the others in the group.

Hood, who had agreed to cease his criminal investigation as part of this Scruggs settlement against State Farm, brings it back and sues them, *but then State Farm turns around and sues him for breaching the non-prosecution agreement and for suing them!* Along the way, Hood testifies at a hearing in Congress where it is a close call who looks more out to lunch, him or Rep. Maxine Waters of California, a member of the subcommittee. Then in the lawsuit brought by State Farm, Hood goes into court to testify and outdoes his earlier performance, completely beclowning himself on the stand such that his lawyers do a simultaneous group facepalm and settle the case with State Farm immediately.

⁸ 31 D.S.C. §§ 3729-3733 (2006), amended by Fraud Enforcement and Recovery Act of 2009, Pub. L. No. 111-21, 123 Stat. 1617.

State Farm also begins a kind of trench warfare version of litigation against remaining cases involving Scruggs and his group, which brings out in discovery a bunch of embarrassing and damaging details and pits the members of the group against each other. While all this is happening, Scruggs is looking more and more foolish, and Hood isn't helping matters any what with the beclownment (at one point he tries to protect Scruggs as his "confidential informant"), and the public relations people Scruggs hired are fit to be tied.

The p.r. people spend a lot of their time worried about my blogging on Scruggs and Katrina developments. Scruggs' son and law partner, Zach, is bummed with the flacks because they can't figure out what to do, and they are at a total loss because they are used to media gobbling up their storyline. They come up with hilariously inept dirty tricks like having minions make defamatory, troll comments after my posts, most of which I just deleted and never published. .

In the Scruggs fee dispute case, Scruggs gets bent out of shape because the guys suing him want to have a public trial, and so he decides to maneuver the thing into private arbitration, *which the guys suing him had demanded in the first place and which Scruggs refused!* But now they want the dispute in public, and naturally that's no place to conduct litigation! How you gonna "arrange" stuff if everyone is looking?

So Scruggs and a few of his crew, including his own son, Zach, conspire to bribe the judge to send it to arbitration. But the judge only pretends to go along with it, and gets the feds involved. They snatch up one of the conspirators, Tim Balducci, who gives it up in seconds flat and flips on Scruggs as seamlessly as a speaker in Orwell's *Nineteen Eighty-Four*⁹ changes the name of the enemy from Eurasia to Eastasia in the middle of a sentence. All that was lacking was Balducci saying, "Oceania has always been at war with Eastasia." In a twist on the Scruggs modus operandi, Balducci gets miked up and becomes the ultimate "insider," "confidential informant" and "whistleblower."

Scruggs get indicted, and his lawyer, Joey Langston, says Scruggs is innocent, and then Langston gets indicted for involvement in yet another conspiracy to influence a judge in another cases *the very same case where the guys now suing Scruggs over fees were representing him in that other fee dispute!* (The guys suing Scruggs didn't know about the improper behavior).

Scruggs, his son, Balducci and a number of others plead guilty of various felonies and most of them do time in prison. But not before Mike Moore, Scruggs' old campadre from tobacco litigation when he was Mississippi Attorney General before Hood, sticks his face in the mess to get some camera time and tries to look like a hero, and for his trouble, gets chewed out and told to shut up by a federal trial judge.

The Rigsby sisters are disqualified as witnesses because they stole documents and also accepted money for jobs from the lawyer who was to call them as witnesses. The lawyers Scruggs picked out for them were disqualified too. New lawyers representing the Rigsbys feared

⁹ GEORGE ORWELL, NINETEEN EIGHTY-FOUR (1949).

being disqualified too, and so did not contest a State Farm subpoena to The Rendon Group, Scruggs' Katrina public relations firm. Some 400 pages of previously secret deliberations hit the public domain. It was revealed, among other things, that the p.r. people thought the Rigsbys were un-Sandra-Bullock-like, that Scruggs was a jerk and that Hood couldn't write well.

There are a lot of other great details, of course, but that's the essence of the plot. My pitch in 25 words or less? *Citizen Kane*¹⁰ meets *Dr. Strangelove*.¹¹

But again, *Kings of Tort* takes on the subject differently. The book gives a more or less chronological history of Scruggs' ascent and subsequent Icarus-like plunge, along with a relatively dispassionate examination of the facts. The authors clearly don't think much of Scruggs, but neither do they measure him for Beelzebub's horns. The pace and structure of the book sacrifices drama but allows the reader to draw his or her own insights into Scruggs' character, relevance and place in the cosmos in a way that might be more difficult if the information were not set out so methodically. The book begins with a crucial moment in the Scruggs story, the highway stop and confrontation by the FBI of a Scruggs hireling fresh from delivering bribery cash, or "sweet potatoes" as he refers to it, to a state court judge who was cooperating with authorities. Even this scene is underplayed, a decision I questioned until I had proceeded to about halfway in the book. Ultimately, letting the reader do a bit of work was the best move for the goals of this book: a man persuaded against his will is of the same opinion still.

For example, even though I know, have read and have written a great deal about Scruggs, I learned some new things and saw his life and career in a somewhat different light after finishing this book. The new opinion I formed of Scruggs, or rather, the amendment I made to my existing opinion, is touched with a peculiar duality. On the one hand, after reading the book, I gave up all remaining notions that there was something admirable about his career. The portrait that emerges from the book is a Charles Foster Kane-like figure whose legacy is of a shrewd and cynical manipulator of the culture and the law chiefly for his own immense gain and aggrandizement, and who preened and basked in the light of a manufactured media glow, a pretend apostle of justice, an Elmer Gantry with a yacht and Lear jet. On the other hand, much like the traitorous Lord Cawdor in *Macbeth*¹² who manned up at execution time so that it was said of him that "Nothing in his life became him like the leaving of it," Scruggs met his fate at sentencing with dignity and a degree of self-reflection that the authors credit with being more than mere bargaining with the priest during Last Rites. Perhaps this was just one more dodge by Scruggs, but like the authors, I tend to believe Scruggs and found myself rooting for him. But then, who isn't a sucker for a story about a guy who is down and out getting a shot at redemption? Elmer Gantry sold that nightly.

Kings of Tort does an excellent job of taking us inside the federal investigation and prosecution of Scruggs, and one would expect this, with a key prosecutor as a co-writer. We learn a lot about how federal investigators and prosecutors do their work, but this section of the book, like the earlier part about Scruggs' earlier career and life, is written from the outside

¹⁰ CITIZEN KANE (RKO Pictures 1941).

¹¹ DR. STRANGELOVE (Columbia Pictures 1964).

¹² WILLIAM SHAKESPEARE, MACBETH.

looking in, if what you want is an insider perspective into Scruggs' cranium. The book is fascinating, but I found myself wishing for more detail, more color, more perspectives, more description, more insider information. Because the events of Scruggs' criminal conspiracy are not the *what* of what undid Scruggs. These are the consequence. But what was it that undid Scruggs, who was he and what is the significance of him and his actions? These are hard questions, but if we don't look for the answers Scruggs is just another orange-jumpsuited jailbird who isn't worth thinking or writing about. Why should we care? That is explained by someone who also landed in stir for a long stretch, albeit for far different reasons, Alexandr Solzhenitsyn:

"If only it were all so simple! If only there were evil people somewhere insidiously committing evil deeds, and it were necessary only to separate them from the rest of us and destroy them. But the line dividing good and evil cuts through the heart of every human being. And who is willing to destroy a piece of his own heart?"¹³

So, whether we like it or not, Scruggs is in us and we are in him, and if we hope to learn anything from the uprooting of Scroggism, we must first face something that Thucydides laid down 2,500 years ago in his *History of the Peloponnesian War*:¹⁴ the things that were are the things that will be, as long as human beings are the way they are. Human beings always have been the way they are and they always will be. All we can do is try to learn from their mistakes and design things so they are less likely to be able to harm others. Scroggism, in one form or another, is a recurring boil on the backside of society.

That brings us back to Marx, and *The Eighteenth Brumaire of Louis Bonaparte*. In looking for a way to explain Dickie Scruggs, one could do worse than examining the concepts in this essay. The 18th day of the month of Brumaire, Year VIII in the French Revolutionary calendar, is what we call November 9, 1799, and is the date Napoleon Bonaparte seized power from the Directory. His nephew, Louis-Napoleon, did more or less the same thing in late 1851, overthrowing the Second Republic. Marx's dictum about history repeating itself, in the opening paragraph of *Eighteenth Brumaire*, spoke to the caricature of the earlier Brumaire and Bonaparte by the later version of both, and this was truer even than Marx knew when he wrote in 1852.¹⁵ Louis Bonaparte's "farce" consisted, in Marx's eyes, of a second "disgrace" of the French Revolution. After being popularly elected as president following the upheavals of 1848, he seized dictatorial powers in a *coup d'etat* on December 2, 1851, the 47th anniversary of the coronation of his uncle as Emperor. Marx finished his essay a month or so later, but the farce was just beginning. On December 2, 1852, Louis crowned himself Emperor Napoleon III. Ultimately he led France in 1870 to a disastrous and humiliating defeat at the hands of the Prussians at Sedan, where he surrendered and became a prisoner of Bismarck. Three days later he and his Second Empire were overthrown.

¹³ ALEKSANDR I. SOLZHENITSYN, *THE GULAG ARCHIPELAGO: 1918-1956* 75 (Perennial Classics 2002).

¹⁴ THUCYDIDES, *HISTORY OF THE PELOPONNESIAN WAR* (431 H.C.E.), available at <http://classics.mit.edu/thucydides/pelopwar.html> (last visited Sept. 22, 2010).

¹⁵ Marx, *supra* note 1.

One does not need to be a big fan of Marx to give him props for *Eighteenth Brumaire*. The concept of man's will that he presented is in opposition both to a mechanical, determinist method of examining people and events, and a view that an individual is a complete free actor. Instead, Marx admits that men make their own choices, but says they move through history laden with the constraints of the past. That seems about right for Scruggs. He grew up poor in a stratified and undynamic Mississippi society, where he figured out pretty quickly that getting to the top means never having to say you're sorry. He was less of an innovator than he was a stubborn guy and a determined opportunist who could see certain financial developments taking shape, recognize how he could benefit, and grab the brass ring first. He was resourceful and made good use of the tools at hand – no Gen. George McClellan was he, always whining for reinforcements, Scruggs was his own reinforcement. He did not let sentiment cloud his judgment. He was rational but understood both the rationality and irrationality of others – he knew what his own self-interest was, and he had a deep understanding of how to appeal to the self-interest of others, and their unspoken biases, fears and resentments. He knew that 90 percent of the law is process and he studied ways to stack the process in his favor. He saw law as another form of transacting business. And he knew that people like a good show, with a good story with characters to root for and against, and he liked playing the hero. Since he was writing the script, who was to say otherwise? But in spite of all he had done, and all the success he had achieved, the dead hand of the past was on his shoulder, and this limited his thinking and therefore his choices, more than he realized. Ultimately, stacking the deck by bribing judges was only a slightly different application of Scruggs' worldview and method of operating, sort of turning the dial to 11, if you will.

When one looks beyond Scruggs' dramatic pose and examines the reality of his actual conduct, it seems – as things often appear in hindsight – somewhat surprising that Scruggs wasn't caught out before he was, and that he had such favorable press. In total, he doesn't seem markedly different in character or method from Chicago mobsters, the creatures that run the show at corrupt-o-corps like Enron, or Russian klepto-oligarchs, except that Scruggs was more self-satisfied, self-congratulatory and self-righteous. Scruggs took a media hit with his indictment and conviction, of course, but the public image was fading fast long before that. Blogs and news media played a major role in unraveling Scruggs, and *Kings of Tort* touches on this. Alan Lange has blogged about possibly writing a second book, following the recent revelations of the emails of Scruggs' p.r. firm, the Rendon Group, and I think he should do it. If Lange doesn't, someone should, and get inside the Katrina litigation and what Scruggs was thinking. The number one question for me that I would like to see answered in another book: how did he get away with it for so long?

Scruggs' whole business model was built on bringing litigation in rigged venues that he bragged about and called "magic jurisdictions," on not leaving paper trails, on making oral deals with plenty of room for favorable interpretation by himself later on when he held a dominant position, on convincing "insiders" (labeled "whistleblowers" to give cover to friendly media) to break the law and steal documents. He had gotten away with this on both the local and national stage in the most blatant example of hiding something in plain sight since Poe's *The Purloined*

Letter,¹⁶ all to his immense profit, glory and respectability among the elite. If anything, it seemed inevitable that Scruggs would go on Scruggsing it up forever; that he had found a sweet spot of corrupted values and culture, populated with natural allies and sycophantic worshipers of power, money and fame, and that there was an endless line of patsies stretching across the horizon, as dumb and ready for slaughter as a herd of pre-frontier bison. When we see Scruggs trading in pinstripes for jail stripes, there is a natural tendency for many to fall into revisionist history and pretend that they never were in that camp that either cheered Scruggs or remained silent, just as the ranks of the French Resistance were tiny during the war but swelled remarkably after the fighting was all over. In truth, few people ever openly took on Scruggs before the handwriting was on the wall for him, and he was loaded up in a tumbrel. We deserve to know why.

In this sense, *Kings of Tort* and other works in the Scruggs *oeuvre* such as Michael Orey's 1999 book *Assuming the Risk*,¹⁷ about tobacco litigation, and Walter Olson's excellent 2003 book *The Rule of Lawyers*, which examines big tort litigation as rent-seeking by a protected and subsidized special interest group of trial lawyers, show us the "tragedy" from Marx's formulation. *Kings of Tort* draws heavily, as the author acknowledges in the endnotes, on Orey's book for many details about Scruggs tobacco and other litigation. But as interesting as these details are, it was Olson who put them in perspective. *The Rule of Lawyers*¹⁸ gives a convincing portrayal of the rampant cynicism behind tobacco litigation and the subsequent settlement involving Congress that established existing tobacco companies as a government-protected cartel, resulted in sweetheart, backroom deals between state governments and tort lawyers that massively enriched lawyers like Scruggs, and created slush funds for politicians through what in effect was a tax on cigarettes paid disproportionately, of course, by lower-income people who are disproportionately smokers. *The Rule of Lawyers* is not, as far as I could see, one of the sources listed in *Kings of Tort's* endnotes, and I think *Kings* would have benefitted from Olson's economic and cultural analysis. In the end, Scruggs, posing as a big anti-smoking hero, was just another guy who transferred wealth from the rubes who light up to himself.

One doubts that back in the day Scruggs would have given Marx's transmitted-past concepts a courtesy nod, and if he did, Scruggs would have treated his contract with destiny as just another of the many unwritten, ambiguous handshake agreements he entered into with lawyers and business associates, to be blown off or altered in his unilateral discretion based on changing circumstances as evaluated by his superior discretion, judgment and will. Though perhaps upon reflection from inside the prison cell he currently occupies, where (as Marx might say) he has nothing left to lose but his chains, Scruggs might see the bearded ghost of old Karl standing before him, holding out the agreement Scruggs inked – or that was inked for him, who is to say which? – long ago.

¹⁶ Edgar Allan Poe, *The Purloined Letter*, in ELENORA, THE FALL OF THE HOUSE OF USHER & THE PURLOINED LETTER (The Harvard Classics Shelf of Fiction 1917) (1845).

¹⁷ MICHAEL OREY, ASSUMING THE RISK: THE MAVERICKS, THE LAWYERS, AND THE WHISTLEBLOWERS WHO BEAT BIG TOBACCO (1999).

¹⁸ WALTER K. OLSON, THE RULE OF LAWYERS: HOW THE NEW LITIGATION ELITE THREATENS AMERICA'S RULE OF LAW (2004).