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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF MISSISSIPPI

UNITED STATES OF AMERICA . Cause No. 3:07CR192  
. .  
Plaintiff . Oxford, Mississippi  
. February 20, 2008  
v. . 9:00 a.m.  
. .  
RICHARD F. "DICKIE" SCRUGGS .  
DAVID ZACHARY SCRUGGS .  
SIDNEY A. BACKSTROM .  
. .  
Defendants .  
. . . . .

MOTION HEARING  
BEFORE THE HONORABLE NEAL B. BIGGERS  
U.S. SENIOR DISTRICT JUDGE

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1           **MR. KEKER:** Excuse me, Your Honor. I object and move  
2 to strike the answer as a conclusion. He was asked what was  
3 said and what he gave was his legal conclusion. Sounds a lot  
4 like the indictment.

5           **THE COURT:** He may explain his answer. The objection  
6 to strike is overruled.

7 **BY MR. NORMAN:**

8 Q. Do you recall who was present at the table when the  
9 decision was made to ask you to do that?

10 A. Yes.

11           **MR. KEKER:** Objection, Your Honor, leading.

12           **THE COURT:** Overruled.

13 **BY MR. NORMAN:**

14 Q. Who, please?

15 A. The five people that I just mentioned.

16 Q. All right. Mr. Balducci, have you ever done anything like  
17 that with Judge Lackey before?

18 A. No, sir.

19 Q. And did you realize -- what did you believe to be the  
20 consequences of approaching a judge under those circumstances?

21 A. Mr. Norman, I knew it to be completely unethical; and I  
22 knew that by doing so that I was risking the loss of my law  
23 license.

24 Q. All right. Now, in fairness to the other side, was any  
25 money mentioned at that meeting?

1           **MR. KEKER:** Objection, Your Honor. Move to strike  
2 that last conclusion and ask that from now on he say who said  
3 what rather than talk generally.

4           **THE COURT:** Well, the objection will be sustained.  
5 Ask specific questions that call for specific answers in that  
6 regard, Mr. Norman.

7 **BY MR. NORMAN:**

8 Q. Sir, do you recall who said what? Do you recall who  
9 suggested this course of action?

10 A. Originally, it was suggested by Zach Scruggs. Zach said  
11 that he was familiar and knew -- it was generally known to  
12 those members of the firm my relationship with Judge Lackey.

13           **MR. KEKER:** Objection, Your Honor. Unresponsive. He  
14 said what?

15           **THE COURT:** Overruled. He may complete his answer.

16           **THE WITNESS:** It was generally known about my  
17 relationship with Judge Lackey, and Zach was the first one to  
18 bring that up and asked if I thought it would be possible for  
19 me to go and have an off-the-record conversation with Judge  
20 Lackey about the case and see if I could persuade him to rule  
21 in their favor.

22 **BY MR. NORMAN:**

23 Q. Did anyone veto the idea?

24 A. No, sir.

25 Q. How long did the discussion last, if you can approximate

1 Q. How long did the meeting last in total?

2 A. Probably about an hour, my best recollection.

3 Q. And I think you told us that the discussion about the  
4 *Jones* case took about 20 minutes?

5 A. My best recollection, yes, sir.

6 Q. Who raised the subject of the *Jones* case?

7 A. I think Mr. Scruggs did, my best recollection. Zach --  
8 excuse me, Dick Scruggs.

9 Q. Who raised the subject of you going to see Judge Lackey?

10 A. Zach Scruggs.

11 Q. Are you sure of that?

12 A. Yes, sir.

13 Q. Wasn't Mr. Patterson?

14 A. No, sir.

15 Q. Did you know of any ex parte contact that had occurred  
16 with Judge Lackey in the *Jones v. Scruggs* case before you went  
17 to this meeting?

18 A. No, sir.

19 Q. Did you learn of any ex parte contact at the meeting?

20 A. At the meeting?

21 Q. Yes.

22 A. At the meeting with Judge Lackey?

23 Q. No. With Mr. Scruggs, Mr. Backstrom, Mr. Zach Scruggs,  
24 Mr. Patterson.

25 A. I'm sorry, Counselor; I don't understand your question.

1 anything about it, did he?

2 A. At that point in time, I'm not sure if Mr. Scruggs had  
3 gotten the word yet or not. I know that I had had a  
4 conversation with Mr. Backstrom before then about paying the  
5 judge the \$40,000. And I understood in the response from  
6 Mr. Backstrom that all three of the defendants had talked about  
7 it and agreed to it, and that I was to go forward and give the  
8 judge the money. But I had not had a personal discussion with  
9 Dick Scruggs at that time, no.

10 Q. Or Zach Scruggs?

11 A. Or Zach, no.

12 Q. You say you had a conversation with Sid Backstrom?

13 A. Yes.

14 Q. When was that conversation?

15 A. Immediately after I left the judge's office when he first  
16 proposed the \$40,000 to me.

17 Q. So that'd be on September 21st?

18 A. I think that's correct.

19 Q. And what did you say to Mr. Backstrom?

20 A. I told him I'd just met with the judge; and that the judge  
21 was getting pressured and influenced, it appeared, from some  
22 other places; and that he told me that he was amenable and  
23 wanted to enter the order; but that he needed \$40,000 to do it.  
24 And I asked Mr. Backstrom, "Is that something that y'all want  
25 me to go forward with; and if so, how do you want me to handle

1 it? Are y'all going to cover it if I do?"

2 Q. Now, you said to Mr. Backstrom that the judge was getting  
3 pressure from other places. What had the judge told you about  
4 that pressure from other places?

5 A. Just what we discussed earlier, that he was in a bind, and  
6 he needed to get over a hump; and it was, you know, essentially  
7 a problem of his own creation and --

8 Q. This wasn't pressure from the Jones side of the case, from  
9 Mr. Tollison's firm?

10 A. Well, I think that he had mentioned once prior to that,  
11 words to the effect, as you asked me earlier, about Grady had  
12 said something, or Grady was putting some pressure on him as  
13 well.

14 Q. And, so, you told Mr. Backstrom that the judge wanted  
15 \$40,000 for this order?

16 A. Yes.

17 Q. Did Mr. Backstrom say that Judge Lackey sounded crazy?

18 A. No.

19 Q. You never remember him saying the situation with Judge  
20 Lackey and Judge Lackey seems crazy?

21 A. No.

22 Q. Did Mr. Backstrom respond to you?

23 A. He did.

24 Q. Okay. And when did he respond to you?

25 A. Called me back later within -- either that day or within a



1 day or so after that.

2 Q. And said what?

3 A. Yes, we want you to go forward. You're covered. Go get  
4 it done.

5 Q. Okay. Now, so you believed the Scruggs Law Firm at that  
6 point knew what Judge Lackey was asking for?

7 A. Yes.

8 Q. So there would be no need for you to involve anybody else  
9 in trying to communicate with the Scruggs Law Firm to get this  
10 Balducci Patterson money?

11 A. Well, the circumstances were such that when Patterson and  
12 I talked about it, we wanted really -- Steve, more than  
13 anything, wanted some direct confirmation from Dick about it.  
14 He wasn't satisfied necessarily with my conversation with Sid.  
15 So Steve said that he was going to contact P.L. Blake and make  
16 certain that he, Steve, got a direct word from Dick that Dick  
17 wanted us to go forward.

18 Q. And when Mr. Patterson contacted P.L. Blake, he never told  
19 P.L. Blake what you and he needed \$40,000 for, did he?

20 A. I wasn't privy to their conversation, sir.

21 Q. Did he tell you that he had not told P.L. Blake what you  
22 needed the \$40,000 for?

23 A. Patterson told me that he told P.L. Blake that we were  
24 working on a problem to solve for Dick, that he wanted us to  
25 solve; and that it was going to cost \$40,000; and that we

1                   **THE COURT:** Well, normally, I don't have redirect,  
2 Mr. Kecker; but I'll give you five minutes to talk to him about  
3 that. That was only in response to matters that were brought  
4 out on cross; but if it wasn't on cross, you could have  
5 objected to it. If it wasn't about a matter brought out on  
6 cross, you could have objected to it. But since you didn't,  
7 they're allowed to get it in. I'll allow you five minutes to  
8 redirect on those points.

9   **RECROSS EXAMINATION**

10 **BY MR. KEKER:**

11 Q. You said you were privy to another matter where Dick  
12 Scruggs bribed a judge. What matter are you referring to?

13 A. A case involving an attorney named Bob Wilson who had sued  
14 Mr. Scruggs for asbestos and possibly tobacco fees.

15 Q. Was that case pending in Hinds County before Judge Bobby  
16 DeLaughter?

17 A. It was.

18 Q. Was Judge Bobby DeLaughter bribed in that case?

19 A. He was.

20 Q. By whom?

21 A. By Dick Scruggs.

22 Q. And was the bribe a money bribe?

23 A. No, sir.

24 Q. What was the bribe that you're referring to?

25 A. He was offered a federal judgeship or he was offered the

1 influence of Mr. Scruggs' brother-in-law, who was Senator Trent  
2 Lott, to put him on the list for consideration of an open  
3 federal district judgeship.

4 Q. So we can get it, what do you understand -- Mr. Scruggs  
5 called Mr. DeLaughter and said something?

6 A. No, sir. Mr. Lott called Mr. DeLaughter.

7 Q. What are you saying?

8 A. I'm saying that Mr. Lott called Judge DeLaughter, at Mr.  
9 Scruggs' request, and told him that he was being considered to  
10 be put under -- or put on the list for consideration for an  
11 open judgeship in that district; and that that was during the  
12 pendency of the case involving Mr. Wilson that was before Judge  
13 DeLaughter.

14 Q. And how do you know that that happened? You talked to  
15 Senator Lott about that?

16 A. No, sir.

17 Q. How do you know that that happened?

18 A. Because I was directly involved in the conversation  
19 between Mr. Scruggs and Mr. Langston where they were discussing  
20 it, where they discussed that the call would be made; and then  
21 I was privy to conversations after the call was made.

22 Q. When was that discussion, the one before?

23 A. When?

24 Q. Yeah.

25 A. It was during the pendency of the *Wilson* case.

1 Q. Do you remember more specifically than that?

2 A. It would have been around the summer of '06.

3 Q. 2006. So June, July, or August 2006?

4 A. I think the *Wilson* case -- my best recollection is the  
5 *Wilson* case was tried in August of '06. So it was shortly  
6 before that.

7 Q. Like within a month or two?

8 A. Yes.

9 Q. Okay. You're sure about that?

10 A. It's my best recollection, yes, sir.

11 Q. Because you were there. So if these conversations didn't  
12 happen in June or July, then you're just completely wrong about  
13 this, right?

14 A. No. No. The conversation -- I think that the call was  
15 made -- maybe I misunderstood what you were asking. I think  
16 that Senator Lott made the call to Judge DeLaughter sometime in  
17 the first quarter or so of '06.

18 Q. And what was Judge DeLaughter supposed to do? What was he  
19 going to do? You said it was a bribe; what was he going to do?

20 A. Rule favorably for Mr. Scruggs.

21 Q. On what, some particular motion or just anything that came  
22 along?

23 A. There were several, yes, sir; and it was for a favorable  
24 outcome.

25 Q. And you know that because you heard Mr. Langston and

1 Mr. Scruggs talking about it?

2 A. I know it for a lot more reasons than just that, but, yes.

3 Q. What are the rest of the reasons?

4 A. I was privy to several meetings with Ed Peters where we  
5 discussed strategies about the case, where we previewed filings  
6 in the case, where we were provided with draft copies of orders  
7 that Judge DeLaughter was going to enter in the case. There  
8 was a lot of stuff.

9 Q. What did that have to do with this call from Senator Lott?

10 A. I'm not sure I understand your question.

11 Q. I'm not sure I understand your answer. What did it have  
12 to do with what you just said; these meetings, what did that  
13 have to do --

14 A. That was part of implementing the favorable outcome in the  
15 *Wilson* case.

16 Q. Are you aware, sir, that the judgeship Judge DeLaughter  
17 was interested in was given to somebody else; by, say, April of  
18 2006, it was gone?

19 A. My understanding is that there were about three different  
20 judgeships that were pending during the *Wilson* case before it  
21 was tried, and that the last federal judgeship was filled  
22 within just a couple of weeks after the trial; that there  
23 was -- during the pendency of the *Wilson* trial, in other words,  
24 there was always an open judgeship on the federal bench.

25 Q. Did the *Wilson* trial end in a settlement whereby

1 recused himself from the *Jones v. Scruggs* case?

2 A. He sent a letter out May 21st after the phone call to  
3 Mr. Balducci.

4 Q. Did he tell you -- did you talk to him before he recused?

5 A. No, I did not.

6 Q. All right. Why did you not include in the affidavit  
7 anything about the recusal?

8 A. I didn't think it was pertinent to the case, you know, to  
9 what we were looking at. Judge Lackey recused himself not  
10 because what he was doing -- there was nothing criminal going  
11 on or nothing wrong. Judge Lackey recused himself, from my  
12 perspective, because he was troubled by this.

13 Like a lot of things that people do when they're -- things  
14 bother them, they want to get away from them. He made that  
15 decision to try and, you know, remove himself from this  
16 problem; but he also realized after he did it that he really  
17 wasn't solving anything; and that, ultimately, this issue of  
18 whether what Mr. Balducci did was merely improper or if there  
19 was criminal intent needed to be resolved. And he was -- he  
20 needed to be involved in that process to finding that out.

21 Q. When he did recuse, did he contact you?

22 A. When he --

23 Q. After he recused?

24 A. When he sent in his subsequent letter saying he was coming  
25 back in?

1 Q. No. I'm talking about after he recused. Did he contact  
2 you?

3 A. The following day.

4 Q. And did you meet with him?

5 A. Yes, I did.

6 Q. And what did you tell him to do?

7 A. I discussed with him, basically, what the options were,  
8 you know. He told me -- he didn't really give me any concrete  
9 explanations, from what I recall, as to why he did it. I could  
10 tell, again, this whole situation troubled him greatly. We  
11 discussed possible options. He told me that, you know, the  
12 door for him getting back in was not necessarily closed.

13 I don't remember specifically what he hadn't done to  
14 finalize it. I think it may have been notify the Supreme  
15 Court, but I'm not sure. But anyway, he indicated to me that  
16 the door was not shut on him getting back into the case. We  
17 talked about it; and when I left him that day, he had not made  
18 a decision one way or the other what he was going to do, other  
19 than he was just going to think about it.

20 Q. Were you demanding that he get back into the case?

21 A. No. No.

22 Q. All right. The next thing to which the defendants refer  
23 is that your affidavit failed to disclose that Judge Lackey  
24 repeatedly contacted Balducci from May until September. As I  
25 said, they're describing Judge Lackey's behavior as aggressive.

1 out on this case; when you're ready, I'll have a position in my  
2 law firm for you.

3 Q. And that's the way Judge Lackey presented it, offer of  
4 quid pro quo?

5 A. Yes, sir.

6 Q. So he had no question in his mind that he had been bribed?

7 A. No, sir. There was no -- see, there was no question that  
8 he had been bribed. That was the whole crux of this thing. He  
9 knew something improper had happened, but he didn't know for  
10 sure if something illegal had happened.

11 Q. So Judge Lackey didn't know whether or not someone had  
12 offered to bribe him?

13 A. Say that again, sir.

14 Q. Judge Lackey, after this first meeting with Mr. Balducci,  
15 spent two weeks trying to figure out what to do about it?

16 A. Uh-huh (yes).

17 Q. And he didn't know, during that two-week period, that he  
18 had been bribed?

19 A. He didn't know whether, you know, what had happened with  
20 Mr. Balducci rose to the level of a criminal action, no. That  
21 was the whole point of contacting the U.S. Attorney's Office  
22 and bringing our office in to determine if that in fact had  
23 happened or would happen.

24 Q. So what you did is set up recording equipment in his  
25 office to get to the bottom of it?



1 A. Basically to make it -- to find out if that in fact had  
2 happened, whether it was just an improper overture by  
3 Mr. Balducci or was it more.

4 Q. When did you set up recording equipment in Judge Lackey's  
5 office? And by you, I mean the Government.

6 A. The first time we tried to made a recorded conversation  
7 was May 3rd.

8 Q. When did you set up the recording equipment?

9 A. I'm not sure when -- what you mean by *set up*. I gave him  
10 a telephone recorder on May 3rd.

11 Q. Was there a call with Mr. Balducci on May 3rd?

12 A. Yes, there was.

13 Q. And was that call recorded?

14 A. It was -- the only thing that was successfully recorded  
15 was the preamble.

16 Q. And what was the preamble?

17 A. Just basically the judge identifying who he was, who he  
18 was calling, the time, the date, the numbers he was calling  
19 from and calling to, from what I recall.

20 Q. And, so, he talks into this recording machine; and we've  
21 been told that there's no recording of this.

22 A. That's correct.

23 Q. You're telling me there was a recording, but it  
24 malfunctioned some point?

25 A. The only thing that was captured on tape was preamble.

1 The actual content of the conversation between Judge Lackey and  
2 Balducci was not captured.

3 Q. Who had control over that recording device on May 3rd to  
4 determine whether or not a call would be recorded or not?

5 A. I gave the recording -- actually, Judge Lackey used his  
6 own recording device on that instance.

7 Q. Oh, so you didn't give --

8 A. I gave him one; he elected to use his own in that  
9 particular incident.

10 Q. And he didn't record the call on May 3rd?

11 A. It was not successfully recorded, no.

12 Q. Did he report to you about that?

13 A. Yes. I was in the office with him.

14 Q. During the call?

15 A. Yes, sir.

16 **THE COURT:** Mr. Keker, the area of inquiry that has  
17 been established for this testimony is to examine what you have  
18 alleged were misleading or false statements that were not put  
19 in the affidavit. Please stick to that area.

20 **MR. KEKER:** And forgive me if I got afield.

21 **BY MR. KEKER:**

22 Q. As I understand your testimony, every one of the omissions  
23 that we have alluded to was done on purpose; you did it  
24 intentionally?

25 A. I won't say it was done intentionally. I weighed what

1 A. Yes, I did.

2 Q. But you also left out of the affidavit -- who called whom  
3 the next day? You got together with him the next day?

4 A. Yes, I did.

5 Q. And you told him to get back in there?

6 A. No, sir, I didn't.

7 Q. Why did you get together with him the next day?

8 A. I believe he called me to tell me that he'd made that  
9 phone call to Mr. Balducci and that he was recusing himself.

10 Q. Well, he filed a form on the 21st, right?

11 A. I'm sorry?

12 Q. He filed a form recusing himself, a formal recusal?

13 A. My understanding is he faxed the letter on the 21st.

14 Q. And he called you and told you about it?

15 A. On the 22nd.

16 Q. And you talked him into getting back in the case?

17 A. No, I did not. He made that decision on his own.

18 Q. Did you and Judge Lackey talk about the fact that up to  
19 now, at least, you as a professional agent and he as a judge,  
20 nothing criminal had happened; there's no case?

21 A. No. We -- in that particular instance, from what I  
22 recall, we discussed his recusal, his possibility of getting  
23 back in. We talked about the different options. And again,  
24 from what I recall, at the end of meeting with him, he had not  
25 made up his mind what he was going to do. He said he would

1 think about it.

2 Q. So when did you learn that he was going to get back in the  
3 case?

4 A. Less than a week later, I believe.

5 Q. Okay. And the first thing you did when you learned he was  
6 going to get back in the case, you came up and wired up this  
7 judge in circuit court; and you sent him up to New Albany to  
8 have lunch with Tim Balducci, right?

9 A. No, that was not the next thing.

10 THE COURT: Counselor, now --

11 MR. KEKER: I'm sorry, Your Honor.

12 THE COURT: Stick with what we've talked about.

13 BY MR. KEKER:

14 Q. Did you say anything in the affidavit about the fact that  
15 you wired him up and sent him to New Albany to have lunch with  
16 Tim Balducci?

17 A. No, I did not.

18 Q. And did you say anything in the affidavit about the fact  
19 that at that lunch nothing -- Balducci, despite being alone in  
20 the car with Judge Lackey not once but twice, said nothing  
21 about the Jones case or about of counsel or any of this?

22 A. No, I didn't.

23 Q. And did you say anything in the affidavit about the fact  
24 that you wired him up again on June 28 and directed him to go  
25 to the Balducci office?

1 needed to get this thing resolved; we needed to get this thing  
2 resolved. And the only way to get it resolved was for him to  
3 broach that question to Mr. Balducci in sort of the form that  
4 he did.

5 Q. Did you say in the affidavit that you filed in September  
6 that for six months of calling and visiting and transcribed  
7 calls Balducci had not even given a glimmer that he was talking  
8 about a bribe?

9 A. Again, the judge -- early on in that first meeting, back  
10 in March, the judge believed that that overture where he talked  
11 about the case and then later *of counsel* was a possibility that  
12 a bribe did exist.

13 Q. Did you say in the affidavit that from March to  
14 September 17 there had never been a hint from Mr. Balducci or  
15 anybody else that they were talking about money bribe to  
16 Judge --

17 A. No, that did not come up. That does not eliminate the  
18 fact of what happened on March 28.

19 Q. So was it -- whose idea was it to raise the issue of a  
20 money bribe in September after this six months of silence?

21 A. Again, it was not the issue of -- the idea of whether it  
22 was a money bribe was not the initial thing. It was framing  
23 the question in such a way, without putting any kind of  
24 tangible value on it, to see what Mr. Balducci's reaction would  
25 be; and that's what he did.

1           The judge told me in early September, he said, "Look, we  
2 need to find out one once and for all what is going on here";  
3 and that's what we decided to do, to have him ask Mr. Balducci  
4 in the manner that's recorded in this conversation on the 18th  
5 of September.

6 Q.       The 18th -- and he asked him -- and Balducci's reaction  
7 was --

8           MR. SANDERS: Your Honor, we're now getting into -- I  
9 think the affidavit was September 25th. I thought we were  
10 getting into what took place after the 25th.

11          MR. KEKER: No. No, still September 18th  
12 conversation. I want to make sure this part is clear. On  
13 September 18 --

14          THE COURT: Limit it to what you've alleged was  
15 omitted from the affidavit or what you allege was in the  
16 affidavit that was materially misleading and why he did that.  
17 That's what this examination is about.

18 BY MR. KEKER:

19 Q.       Did you put in the affidavit that in response to a  
20 suggestion by the judge that they do something for him? Did  
21 you put in the affidavit that Mr. Balducci did not offer to do  
22 anything for him, did not come back with any concrete proposal?

23 A.       I put in the affidavit the contents of that conversation  
24 from September 18.

25 Q.       Well, you didn't put in all the contents, did you?

1 mistaken in his overtures in March or early May and relay that  
2 to me, if it was on tape, then I probably would have approached  
3 Mr. Balducci, interviewed him, tried to find out exactly what  
4 his intentions were. Based on that, I may have gone and  
5 interviewed Mr. Scruggs; but certainly, I would have talked to  
6 Mr. Balducci.

7 Q. And finally, you mentioned once -- you said that Judge  
8 Lackey had -- Mr. Kecker did -- he said that Judge Lackey  
9 recused because he was being earwigged by the other side. You  
10 said you met with Judge Lackey after he recused. Was that why?

11 A. No. He recused himself because he was terribly troubled  
12 by this.

13 **MR. SANDERS:** Your Honor, I don't have any more  
14 questions for this agent on the September 25th wiretap.

15 **THE COURT:** All right. You may step down.

16 **MR. KEKER:** Your Honor, may I ask him one question  
17 about the September 25?

18 **THE COURT:** Was it anything that came out on cross?

19 **MR. KEKER:** Well, it's the date.

20 **THE COURT:** You may ask him about any question that  
21 came out on cross-examination.

22 **MR. KEKER:** This is something that -- I wouldn't say  
23 it came -- this has to do with the affidavit and the date.

24 **THE COURT:** One question.

25 **MR. KEKER:** One question.

1 Mr. Balducci on 11 -- on November 2 and November 7, correct?

2 A. Yes.

3 Q. You stated -- and all you stated about March 2007 in the  
4 Scruggs office is what I just read, that five people met in the  
5 offices of the Scruggs Law Firm in Oxford for the purposes of  
6 discussing ways and means for the purpose of corruptly  
7 influencing the outcome of *Jones et al. V. Scruggs*, right?

8 A. Yes.

9 Q. And at that point, you knew Mr. Balducci, who you arrested  
10 and was cooperating, had said that at that meeting Dick Scruggs  
11 said he was not asking Balducci for anything illegal but would  
12 Balducci see if the judge would move the matter to arbitration.  
13 You knew that you were -- that he'd said that to you, and you  
14 omitted it from the search warrant affidavit.

15 A. There was some disagreement -- I'm not going to say  
16 disagreement -- misunderstanding about that statement. That  
17 was my understanding the way he said it at the time. We later  
18 talked to him about it. He said that was not his recollection  
19 of that meeting.

20 That information went in the affidavit subsequently after  
21 that where we discussed it again. And we talked about it; and  
22 we determined that it, you know -- that it is what myself and  
23 the other agent heard. And at that time, Mr. Balducci was not  
24 going to dispute it. He said, "If that's what you heard,  
25 that's what I said."



1 Q. You had notes of your interviews on the 2nd and 7th of  
2 November with Mr. Balducci, didn't you?

3 A. Yes.

4 Q. And when you checked your notes and what your notes told  
5 you, you were right in what you put in the report?

6 A. Yes, sir.

7 Q. Dick Scruggs said he was not asking Balducci for anything  
8 illegal?

9 A. Yes.

10 Q. And you didn't -- just tell us why you didn't put that  
11 into the search warrant affidavit. Why didn't you say --  
12 instead of saying they met for purposes to figure out  
13 corrupt -- how to corruptly influence the outcome of the case,  
14 why didn't you say, two weeks ago the persons there -- I wasn't  
15 there, the person that was there told me that Dick Scruggs said  
16 he didn't want to do anything illegal; but will you please talk  
17 to your friend, the judge, about getting this case to  
18 arbitration? Why didn't you put that in the affidavit?

19 A. Again, that issue -- when the affidavit was written, I was  
20 under the -- I was under the belief, based on the subsequent  
21 interview with Mr. Balducci, that there was elicited conversation  
22 in that March 20th interview. I did not check my notes when I  
23 talked to Mr. Balducci the second time. I was going off my  
24 memory. He assured me that there was.

25 When I subsequently later went back -- and this was after

1 the affidavit was signed -- I checked my notes and saw that in  
2 fact that's what my notes reflected, that he said there was  
3 nothing illegal -- Mr. Scruggs was not asking him to do  
4 anything illegal.

5 Q. You also said that Dick Scruggs stated that Judge Lackey  
6 ought to move the case to arbitration since it was the correct  
7 thing to do. Why didn't you put that in the affidavit?

8 A. Because, again, that was back in March. Subsequently, as  
9 the investigation rolled on, it showed that that was not the  
10 case. That may have been at that time; but subsequently, it  
11 was -- it appeared that there was more to it than that, just  
12 asking the judge to do -- to move the case to arbitration, but  
13 to actually, you know, bribe the judge to have it done.

14 Q. But -- okay. You're telling the judge who you're  
15 submitting the search warrant affidavit to that the meeting in  
16 March was for the purpose of discussing ways and means of  
17 corruptly influencing the outcome of the case; and you don't  
18 put in that Scruggs said he didn't want to do anything illegal,  
19 the right thing to do was to move it to arbitration?

20 A. Again, the first interview, that's what I had in my notes.  
21 The subsequent interview with Mr. Balducci, I did not have my  
22 notes in front of me when I spoke to him. He assured me that's  
23 not what happened; I misunderstood him. When I later -- after  
24 the affidavit was signed -- checked my notes, confirmed with my  
25 partner, I felt that I was correct in the first instance; and

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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 20th day of February, 2008.



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