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February 28, 2008

**VIA E-MAIL**

David A. Sanders  
United States Attorney's Office  
Northern District of Mississippi  
900 Jefferson Avenue  
Oxford, MS 38655

**Re: U.S.A. v. Scruggs, et al., Case No. 3:07-CR-192**

Dear Dave:

I write to request the production of the following material which should be produced pursuant to the government's obligations under Rule 16 and *Brady/Giglio*.

**A. *Brady/Giglio* material related to statements and testimony of government witnesses about the allegations in the indictment.**

Defendants renew their request that the government produce, pursuant to *Giglio v. United States*, 405 U.S. 150 (1972), and *Brady v. Maryland*, 373 U.S. 83 (1963), all documents, books, papers, photographs, tests or experiments, objects, statements of witnesses, and other evidence and information which tends to exculpate defendants, which may be favorable or useful to the defense as to either guilt or punishment, which tends to affect the weight or credibility of evidence to be presented against defendants, or which would impeach government witnesses.

Your production should include all of the following categories of materials or information, to the extent they are either within the possession, custody or control of the government, are known by the government to exist or could by the exercise of due diligence become known to the government:

1. All information tending to contradict or disprove the statement in the 302 report regarding the November 7, 2007, interview of Timothy R. Balducci that the Scruggs Law Firm desired that Judge Henry L. Lackey enter summary judgment on their behalf and sought Balducci's assistance in obtaining that result.
2. All information tending to contradict or disprove Balducci's testimony that Richard F. Scruggs was the one who raised the subject of the *Jones* case during

David A. Sanders  
February 28, 2008  
Page 2

the March 2007 meeting with Balducci and Steven A. Patterson. *See* 2/20/08 Tr. at 45:6-8.

3. All information tending to contradict or disprove Balducci's testimony that Zach Scruggs "was the first one to bring ... up" the idea of Balducci talking to Judge Lackey or Balducci's testimony that Zach "asked if I thought it would be possible for me to go and have an off-the-record conversation with Judge Lackey about the [Jones] case and see if I could persuade him to rule in their favor." 2/20/08 Tr. 32:17-21.
4. All information tending to show that Joey Langston asked Balducci to approach Judge Lackey regarding the *Jones* case.
5. All information tending to contradict or disprove Balducci's grand jury testimony that he was owed \$400,000 by Dick Scruggs or the Scruggs Law Firm at the time of the March 2007 meeting. *See* 11/27/07 Tr. at 14:14-25.
6. All information tending to contradict or disprove Balducci's grand jury testimony that, as of March 2007, Patterson & Balducci was going to be asked to assume the Jones Funderburg firm's role in the Scruggs Katrina Group. *See* 11/27/07 Tr. at 10:3-13.
7. All information tending to contradict or disprove Balducci's testimony that, when he first approached Judge Lackey in March 2007, he "knew" that his conduct was "completely unethical" and "knew that by doing so [he] was risking the loss of [his] law license." 2/20/08 Tr. at 29:21-23.
8. All information tending to contradict or disprove Agent William P. Delaney's testimony that, in Judge Lackey's mind, "there was no question that he had been bribed. That was the whole crux of this thing." 2/20/08 Tr. at 130:6-8. Such information should include but not be limited to:
  - Information about conversations Judge Lackey had with other people after the March 28, 2007, meeting;
  - Any notes or memos made by Judge Lackey concerning the March 28, 2007, meeting;
  - All notes and memoranda memorializing Judge Lackey's description of the March 28, 2007, meeting; and
  - All notes and memoranda concerning Balducci's recollection of the March 28, 2007, meeting.

David A. Sanders  
February 28, 2008  
Page 3

9. All information tending to show that Judge Lackey did not, as represented in Agent Delaney's September 25, 2007, affidavit, call federal authorities "at the conclusion of" the March 28, 2007, meeting but rather waited for days or weeks. Such information should include but not be limited to:
  - Information from the U.S. Attorney's Office or from DOJ/FBI files showing the date Judge Lackey first contacted the government; and
  - Information concerning individuals with whom Judge Lackey spoke about his March 28, 2007, meeting with Balducci between the time of that meeting and his contacting the U.S. Attorney's Office.
10. All information concerning any wrongdoing by Judge Lackey or any information about what may have motivated Judge Lackey with respect to his cooperation with the federal government, including but not limited to information concerning:
  - Judge Lackey's business relationships with persons convicted of crimes;
  - Judge Lackey's ex parte communications with other lawyers regarding cases before him at the time of the communications;
  - Judge Lackey's past involvement in corrupt overtures; and
  - Judge Lackey's receipt of monetary and non-monetary things of value including money, business services, tangible items, loans, forgiveness of loans, or favors in exchange for favorable rulings.
11. All information tending to contradict or disprove Agent Delaney's testimony that Judge Lackey decided on his own to recuse himself from the *Jones* case. See 2/20/08 Tr. at 120:14-17, 153:11-12.
12. All information tending to contradict or disprove Agent Delaney's testimony that he did not demand that Judge Lackey withdraw his letter of recusal from the *Jones* case. See 2/20/08 Tr. at 121:20- 21.
13. All information tending to contradict or disprove Agent Delaney's testimony that it was Judge Lackey's idea to ask Balducci for a monetary payment. See 2/20/08 Tr. at 147:19-148:5.
14. All information tending to contradict or disprove Balducci's testimony that he had a conversation with Sidney A. Backstrom in September 2007, about Judge Lackey's demand for \$40,000. See 2/20/08 Tr. at 76:3-9, 77:25-8:4.
15. All information tending to show that the Balducci, Patterson, and/or the Patterson & Balducci firm was suffering from financial difficulties.

David A. Sanders  
February 28, 2008  
Page 4

16. All information tending to show that Balducci, Patterson, or the Patterson & Balducci firm worked on voir dire or jury instructions for the Scruggs Law Firm in October or November 2007, including, but not limited to:
    - Invoices;
    - Time sheets;
    - Physical files or documents;
    - Legal research; and
    - Information about conversations with defendants or other employees of the Scruggs Law Firm about voir dire or jury instructions.
  17. All information concerning Balducci's November 19, 2007, trip to the Scruggs Law Firm offices, including any recordings, reports, notes, or other documents relating to this incident.
  18. All information tending to show that Balducci, Patterson, or Patterson & Balducci had previously asked defendants or other members of the Scruggs Law Firm to assign them work in exchange for monetary payments.
  19. All information concerning phone calls between Judge Lackey and Balducci between March 2007 and November 2007 that were not recorded, including all information concerning calls between Judge Lackey and Balducci made or received on Judge Lackey's cellular and home telephones and all information concerning calls made or received on Balducci's office or home telephones.
  20. All information tending to show that between March 2007 and September 2007, Balducci did not call or otherwise initiate contact with Judge Lackey.
- B. Specific documents identified during the February 20-21, 2008, hearings on defendants' pretrial motions.**

Judge Lackey's "Note on Tim Balducci" referenced in the 302 report concerning Agent Delaney's April 23, 2007, interview of Judge Lackey. The 302 report concerning Agent Delaney's first interview with Judge Lackey on April 23, 2007, contains remarkably little about what Judge Lackey told Agent Delaney regarding his March 28, 2007 meeting with Balducci. Instead, the 302 refers to a report that Judge Lackey allegedly wrote on March 28, 2007, and which he titled "Note on Tim Balducci." The 302 states that Judge Lackey's "Note" is attached to the 302; however, it was not attached to the copy produced by the government at the February 20, 2008 hearing. Given the significance of the March 28, 2007, meeting and the fact that Agent Delaney's 302 contains almost no detail regarding what Judge Lackey told him about

David A. Sanders  
February 28, 2008  
Page 5

that meeting, defendants request that the government produce the "Note on Tim Balducci" immediately.

Materials relating to the failed recording of the May 3, 2007, telephone call between Judge Lackey and Balducci. Agent Delaney testified at the hearing that, although the government had planned to record the conversation between Judge Lackey and Balducci on May 3, 2007, the actual content of the conversation was not recorded, and that the tape recording captured only the preamble to the recording. *See* 2/20/08 Tr. at 131-132. Agent Delaney further testified that while he had provided Judge Lackey with a telephone recorder on May 3, Judge Lackey opted to use his own recording device to record the call. *Id.*

Given these highly unusual circumstances pertaining to this important first recorded call, defendants request the opportunity to inspect: (1) the original tape used by Judge Lackey to record the phone call; (2) the original tape, if any, that Agent Delaney gave to Judge Lackey on May 3d but which he did not use; (3) the recording equipment given to Judge Lackey to use and the recording equipment he did in fact use; and (4) any other recordings, reports, notes, and/or documents used to compile the 302 report concerning the May 3, 2007 call, including notes prepared by Judge Lackey and notes prepared by Agent Delaney.

All reports, notes, and documents related to the government's May 22, 2007 meeting with Judge Lackey. Agent Delaney testified that, after Judge Lackey sent his recusal letter on May 21, 2007, he met with Judge Lackey the next day. Agent Delaney testified that he discussed with Judge Lackey his reasons for recusing himself and his "options" at that time. *See* 2/20/08 Tr. at 120-121, 140-141. The 302 report prepared by Agent Delaney, however, contains nothing about why Judge Lackey recused himself and nothing about what "options" Agent Delaney discussed with Judge Lackey. Defendants therefore request that the government produce all other reports, notes, and documents related to the May 22, 2007 meeting between Agent Delaney and Judge Lackey, specifically including Agent Delaney's original notes from that meeting.

All agent notes of the government's interview of Balducci on November 2, 2007. Agent Delaney's report regarding the government's November 2, 2007 interview of Balducci reflects that Balducci told the government that Dick Scruggs specifically told Balducci at their March 2007 meeting that "he was not asking ... for anything illegal." Agent Delaney testified that there had been "some ... misunderstanding" between the government and Balducci about this statement. 2/20/08 Tr. at 176:15-16. Agent Delaney then testified that he checked his rough notes and declined to change the statement as it appeared in the report. *Id.* at 177:19-178:4. However, Agent Delaney's November 26, 2007, affidavit does not reflect Balducci's statement that Scruggs specifically asked him not to do anything illegal.

Because there is a question whether the report is accurate, it is appropriate to produce the rough notes of the November 2, 2007 interview, which were taken contemporaneously. Moreover, because Agent Delaney testified about these matters, the rough notes are Agent Delaney's "statement" to which defendants are entitled under Rule 26.2 and the Jencks Act.

David A. Sanders  
February 28, 2008  
Page 6

Balducci's desk calendars referenced in the CHS Reporting Document regarding the government's November 7, 2007, interview of Balducci. The CHS Reporting Document regarding the government's November 7, 2007 interview of Balducci indicates that, in the course of the interview, Balducci produced to the government desk calendars for March, May, and September 2007. We had previously understood that all documents obtained from Balducci had been provided to us, but we have not been given copies of these calendars. Please produce them immediately.

Balducci's telephone records referenced in the CHS Reporting Document regarding the government's November 7, 2007, interview of Balducci. The CHS Reporting Document regarding the government's November 7, 2007 interview of Balducci indicates that "[a] copy of [Balducci's] telephone records from 09/21/07 is attached to this report...." Report at 7. The copy of the report produced to us does not have these telephone records attached. Please produce them.

**C. Rule 16 materials related to the allegations regarding *Wilson v. Scruggs*.**

Defendants renew their request for Rule 16 materials related to the government's allegations that Dick Scruggs and Zach Scruggs were involved in an attempt to corruptly influence Judge DeLaughter in connection with *Wilson v. Scruggs*. More specifically, defendants request:

1. All records, reports, memoranda, notes or other writings that contain the substance of any oral statement, related to the Judge DeLaughter allegations, that was made by defendants to government agents, attorneys, or investigators or persons working for or on behalf of the government, such as Senators Thad Cochran and Trent Lott. *See* Fed. R. Crim. P. 16(a)(1)(A).
2. All records, reports, memoranda, notes or other writings that contain the substance of any oral statement made by defendants to persons who have assisted the government in conducting an investigation in contemplation of or in furtherance of cooperating with or providing information with respect to an alleged attempt to corruptly influence Judge DeLaughter. *See id.* Such persons include, but are not limited to, Balducci, Joseph C. Langston, Steven A. Patterson, Ed Peters, and Judge DeLaughter.
3. The substance of all oral statements, related to the Judge DeLaughter allegations, that were made by any defendant to government or law enforcement authorities which have not been disclosed and which the government may use at trial, including any relevant statements made to Senators Cochran and Lott. *See* Fed. R. Crim. P. 16(a)(1)(A). This includes not only statements which the government intends to introduce at trial, but also statements which the government may use for impeachment or other purposes.

David A. Sanders  
February 28, 2008  
Page 7

4. With respect to the government's due diligence obligation, please provide the name and whereabouts of any government agent or witness who has had contact with any defendant about the Judge DeLaughter allegations but who has not been interviewed to determine whether any defendant made statements in his or her presence.
  5. All statements allegedly made by any alleged co-conspirator of defendants in furtherance of the alleged conspiracy to corruptly influence Judge DeLaughter, whether those statements are written, oral, or recorded.
  6. All physical tangible evidence related to the Judge DeLaughter allegations which the government intends to use in its case in chief. *See* Fed. R. Crim. P. 12(b)(4), 16(a)(1)(E).
  7. Copies of all books, papers, documents, including electronic data, and photographs which are material to the preparation of the defense of the Judge DeLaughter allegations or which are intended for use by the government at trial or which were obtained from or belong to defendants. *See* Fed. R. Crim. P. 16(a)(1)(E).
  8. Please provide a description of all tangible objects, buildings, or places which are material to the preparation of the defense of the Judge DeLaughter allegations or which are intended for use at trial or which were obtained from or belong to defendants. *See* Fed. R. Crim. P. 16(a)(1)(E).
  9. Copies of all books, papers, documents, including electronic data, and other objects in the government's control that were obtained from any alleged co-conspirator who was involved in an attempt to corruptly influence Judge DeLaughter.
  10. All documents, including electronic data, relating to the investigation of the Judge DeLaughter allegations which were produced to any branch of the government by a third party, including, but not limited to, Balducci, Langston, Patterson, Peters, Judge DeLaughter, and former Senator Lott and persons working for or on behalf of them.
- D. *Brady/Giglio* material related to the allegations regarding *Wilson v. Scruggs*.**

Defendants also renew their request for all documents, books, papers, photographs, tests or experiments, objects, statements of witnesses, and other evidence and information which tends to exculpate defendants of the Judge DeLaughter allegations, or which may be favorable or useful to the defense as to either guilt or punishment, which tends to affect the weight or credibility of evidence to be presented against defendants, or which would impeach government witnesses. *See Giglio*, 405 U.S. at 150; *Brady*, 373 U.S. at 83. More specifically, defendants request:

David A. Sanders  
February 28, 2008  
Page 8

1. The statements of all persons having relevant information about the Judge DeLaughter allegations, whether such statements are sworn or unsworn, whether or not the government believes in the credibility of the statement, that are exculpatory and helpful to the defense. This request includes, without limit, statements that are exculpatory and helpful to defendants; the names of all people whom the government asked whether they would and/or could implicate defendants in any criminal wrongdoing and who would not and/or could not so implicate defendants; and the names and statements of all people whether indicted or not who have confessed to acts that form the basis for the indictment.
2. A detailed description of all discussions of potential criminal or civil liability, or the potential consequences of same, or the potential resolution or avoidance of same, or any discussion of or promises or grants of immunity, lenience, financial assistance, or any other assistance to any person the government intends to or may call as a witness or upon whose statements the government will or may rely. The request includes but is not limited to any help or promise to help the witness in his profession or business or any promise not to jeopardize his profession or business. This request also includes all help or promises of help (including but not limited to money and leniency) given to such person for his work, information, or testimony in this case or any other case. This request includes all correspondence, email, or notes of conversations between attorneys or agents of any branch of the U.S. Government (*including the U.S. Senate*), on the one hand, and any potential government witness or cooperating person or entity or counsel therefor, on the other hand, regardless of whether such potential witness or cooperating person or entity will in fact testify for the government.
3. A detailed description of any situation where a prosecution witness could be named as a defendant or co-conspirator in this or any other case but has not as yet been charged, and any threat to charge or prosecute this witness or promise not to charge or prosecute the witness. *See Giglio*, 405 U.S. at 150; *United States v. Sutton*, 542 F.2d 1239, 1242 (4th Cir. 1976); *United States v. Gerrard*, 491 F.2d 1300, 1304 (9th Cir. 1974).
4. With respect to government witnesses who may testify about the Judge DeLaughter allegations, please provide any and all information relevant to the credibility of those witnesses and which may be used as the basis for impeachment of such witnesses. Such information includes but is not limited to (i) evidence of prior convictions; (ii) evidence of past or ongoing criminal conduct which has not been prosecuted but of which the government is, or should with reasonable diligence be, aware; (iii) evidence of any professional misconduct or disciplinary infractions; (iv) any and all benefits provided by the government to the witness or members of his or her family, including any benefits conferred pursuant to the Witness Security Reform Act of 1984; (v) instances, including amounts and dates, of payments made to, or on behalf of, the witness or members

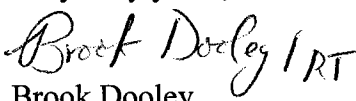


David A. Sanders  
February 28, 2008  
Page 9

of his or her family for any purpose, including rewards, subsistence, salary, commissions, housing, medical and dental treatment, as well as treatment for counseling and substance abuse; (vi) any information suggesting that the witness is mentally ill or has in the past suffered from or been treated for mental illness; (vii) instances of intervention by the United States, or other law enforcement agencies, on the witness's behalf with local, state, federal or foreign police, prosecution, regulatory, correctional or paroling authorities; (viii) any cooperation agreements; and (ix) instances where the witness has made prior statements – whether currently reduced to writing or not – which are inconsistent with later statements or the witness's anticipated trial testimony. Please preserve all rough interview notes of potential witnesses, including any such notes prepared by state or federal agents, attorneys or regulatory authorities, for potential disclosure under *Brady* or the Jencks Act, 18 U.S.C. § 3500. See *United States v. Bagley*, 473 U.S. 667 (1985); *Giglio*, 405 U.S. at 150.

5. All information tending to contradict or disprove Balducci's testimony that Dick Scruggs bribed Judge Bobby DeLaughter. See 2/20/08 Tr. at 86:18-21.
6. All information tending to contradict or disprove Balducci's testimony that he "was directly involved in the conversation between" Dick Scruggs and Langston "where they were discussing [Senator Lott's alleged call to Judge DeLaughter], where they discussed that the call would be made; and then I was privy to conversations after the call was made." 2/20/08 Tr. at 87:18-21.
7. All information tending to contradict or disprove Balducci's testimony that "I was privy to several meetings with Ed Peters where we discussed strategies about the [Wilson] case, where we previewed filings in the case, where we were provided with draft copies of orders that Judge DeLaughter was going to enter in the case." 2/20/08 Tr. at 89:4-8.
8. All information tending to contradict or disprove the allegation that Langston communicated or was asked to communicate to Peters or Judge DeLaughter that Dick Scruggs could have Judge DeLaughter considered for a federal judgeship on the condition that Judge DeLaughter rule in favor of Scruggs in *Wilson v. Scruggs*.

Thank you for your attention to the foregoing. Please do not hesitate to call me if you have any questions.

Very truly yours,  
  
Brook Dooley

cc: Todd P. Graves  
Frank W. Trapp