

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

E. A. RENFROE & COMPANY, INC.,)
Plaintiff,)
) Case No. 2:06-CV-01752-WMA
v.)
) Birmingham, Alabama
CORI RIGSBY MORAN and) March 19-20, 2007
KERRI RIGSBY,) 9:31 a.m.
Defendants.)

TRANSCRIPT OF CONTEMPT HEARING
BEFORE THE HONORABLE WILLIAM M. ACKER, JR.
SENIOR UNITED STATES DISTRICT JUDGE

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1 March 19, 2007 9:31 a.m.
2 PROCEEDINGS
3 (Court called to order.)
4 THE COURT: Good morning.
5 (Response.)
6 THE COURT: Ms. Flowers, do you have the notation of
7 who's appearing?
8 THE COURT REPORTER: Yes, sir, I do.
9 THE COURT: Any of you ladies and gentlemen who have
10 not been before me before in this case, when your time comes,
11 introduce yourself for the record, if you would.
12 At the risk of disappointing some of you -- and
13 apparently from the audience, there are a lot of people that
14 are interested in what's going on today in this court and in
15 this case -- I have not ruled on Renfroe's alternative or
16 duplicative request that its allegation of contempt be
17 considered as a possible criminal contempt as well as a civil
18 contempt. I think I made a mistake in not ruling on that and
19 letting everybody know how I feel about that.
20 I have had research done and have satisfied myself that
21 the same conduct can constitute both civil contempt and
22 criminal contempt, and can be looked at under both sets of
23 rules. The rules are different and the sanctions are
24 different and the purposes of the two inquiries are
25 different. You all are here knowing, all of you, that the

1 only matter that's before this court today under the state of
2 the pleadings that we have now and the orders has to do with
3 civil contempt.

4 While being satisfied that I can both look at the conduct
5 that's complained of under both sets of rules, I'm only
6 looking at it today, and you are only asked to address it
7 today, under one set of rules, the civil contempt rules,
8 which place the burden of proof on the party seeking an order
9 under the civil contempt rules, and that would be Renfroe.

10 And the burden of proof being on Renfroe is not just to
11 prove an act of contempt but exactly what it is. And because
12 the civil contempt sanctions are only designed for enforcing
13 and because we know, I think we all agree, that to some
14 degree, that is the question and the reason for continuing to
15 look at it under the civil contempt rules. There's been some
16 compliance with the order of mandatory injunctive relief
17 which required the defendants and their agents, servants,
18 persons acting in concert with them to disgorge or return
19 documents which the two individual defendants, the named
20 defendants, allegedly and apparently concededly took while
21 working for Renfroe and delivered them to other places.

22 Now, right before a particular date upon which the
23 defendants were to show cause, a number of, and I don't know
24 the exact number, we may have to get into that, of documents
25 were delivered to counsel for Renfroe. Renfroe has not only

1 addressed the court and asked the court to consider this for
2 criminal contempt, but has asserted in its civil contempt
3 proceeding an insistence that that injunction has not been
4 complied with fully in what it said, both asserted and
5 alleged, that there are less than all the documents that were
6 delivered.

7 If that's true and if Renfroe can prove that -- And the
8 burden is not just by a preponderance of the evidence. Under
9 the law it's by clear and convincing evidence. The burden is
10 on Renfroe to prove by clear and convincing evidence that the
11 defendants are not in compliance.

12 Now, I think that as we look at this with respect to what
13 the sanction for contumacious conduct might be, once the
14 defendants, individual defendants, and their agents, servants
15 or employees have ostensibly complied, if they've complied,
16 that ends the inquiry as far as civil contempt, which means
17 that the only inquiry today under civil contempt rules would
18 be have they complied, because the purpose, as I've said, of
19 civil contempt is to force compliance.

20 It's not to punish noncompliance, if there was any,
21 between the date of the injunction and the compliance. That
22 would be, I think, the office of criminal contempt, and it
23 probably explains why the plaintiff, Renfroe, sought that as
24 an alternative, because Renfroe thinks, based on what it
25 says, that there should be some sanction for the

1 noncompliance during the time there was no compliance.

2 In theory, under that scenario, if true, there could be
3 criminal contempt. But if you proceeded, if I proceeded, if
4 we all proceeded under a criminal contempt theory, the
5 defendants and those acting in concert with them would have
6 the right to demand a jury, I think, unless I announced in
7 advance that any incarceration that might result in the way
8 of a punishment would not exceed six months. I think that's
9 the rule.

10 But not only would there have to be a jury upon demand,
11 but the U. S. attorney would have to be notified and given
12 the right to participate and prosecute. Obviously, we've
13 done none of that, and because I did not respond to and have
14 not ruled upon the alternative that was requested by Renfroe.

15 If everybody agreed to proceed on both routes today, I
16 think we could do it by agreement. Despite the fact that the
17 U. S. attorney has not been notified, I think that's
18 waiveable. But I'm not asking for that. I'm suggesting that
19 that is a possibility if you want to do it.

20 Another possibility is, since I haven't ruled on it, and
21 if I agreed with Renfroe that the criminal contempt
22 possibility is worthy of proceeding to the extent that I
23 would notify the U. S. attorney about it, we could continue
24 this because they can be considered at the same time, which
25 would mean that if that was the way we proceeded, the inquiry

1 as far as civil contempt would be limited, as I think it
2 would have to be today, to the extent to which the defendants
3 and their agents have complied. And the burden would be on
4 Renfroe to show that they have not complied fully, and then I
5 would rule on that, and of course if I determined and decided
6 that Renfroe had met the burden of proving by clear and
7 convincing evidence that out of 15,000 documents five had not
8 been produced or ten or twenty or a thousand or whatever.

9 And, you know, this is an interesting but very
10 complicated inquiry because we're talking about 15,000 items.
11 And obviously Renfroe has said in its papers that it's
12 satisfied based on what its investigation has shown that they
13 haven't gotten all of them back despite the injunction.

14 Well, that's going to be interesting to see how that
15 develops: One, fifty, a hundred, a thousand. And what are
16 they? What do they indicate? How important are they? All
17 those are factors that I have to savor, think about, reach
18 conclusions about, about facts as to whether they exist or
19 not and, two, what the result should be, as a result of what
20 the sanction should be, in order to force the compliance by
21 those documents that are absent, if any of them are absent.

22 So with all that, I think the first question for me, and
23 I therefore for you this morning, and turning to Renfroe, if
24 Renfroe wants to proceed just on the civil questions as I've
25 outlined them, and assuming that the proceedings are as I say

1 they are and that the burdens are what I think they are, do
 2 you want me to let you proceed with that and decide the
 3 question of the documents that you say have not been
 4 returned, and if they haven't been returned, to enter a
 5 coercive order of some kind which would force their return?
 6 Now, that would be civil contempt. If it's important
 7 enough to the plaintiff to get those documents as I ordered
 8 them to be returned to enforce that injunction, then I think
 9 we should, and you should, proceed.
 10 Now, when I last week, I think it was last week, ruled on
 11 a pending discovery matter in which Renfroe was objecting to
 12 the participation by Mr. Scruggs in the deposition of the
 13 Renfroe 30(b)(6) witness, I halved the pie and said that Mr.
 14 Scruggs' counsel could be there, but could not ask questions.
 15 When I did that, I was assuming, I may have been erroneously
 16 assuming, I had other things to do, so I didn't bring you all
 17 in to share with you what I was thinking before I did it. I
 18 reacted quickly because you needed a quick reaction.
 19 The deposition was set, I think, the next day. But I was
 20 thinking that that deposition, that 30(b)(6) deposition, was
 21 designed entirely, almost entirely, if not entirely, for
 22 purposes of the underlying damage suit that continues in
 23 which Renfroe is seeking damages from Moran and Rigsby, not
 24 damages from Scruggs.
 25 Well, I might be wrong. As it turns out, I'm not sure

1 where that went because I don't have a transcript of it, so I
 2 don't know whether there was a discussion or an attempt to
 3 elicit facts or evidence which would bear on the issues of
 4 compliance of that injunction, which would be something we're
 5 going to talk about today. If it was, then I may have been
 6 mistaken in not allowing Scruggs to participate in it and
 7 inquire. But you can address that, if we need to, in a
 8 minute.
 9 One other thing before I turn it loose for you. When the
 10 parties' planning meeting occurred, Scruggs, of course, was
 11 not invited because he was not a party and is not a party.
 12 So only Renfroe's lawyers and Moran and Rigsby's lawyers were
 13 present and they filed what appeared to be a report of
 14 parties' planning meeting, which my courtroom deputy, seated
 15 at my left now, is her responsibility to look at, make
 16 tentative questions, if she has any, about whether anything
 17 is appropriate that needs to be talked about to me before
 18 putting it in the form of a scheduling order. She did that.
 19 She saw no disputes. Things looked reasonable to her.
 20 She presented it to me. I looked at it. Things looked
 21 reasonable to me, and I signed it, only to find that there
 22 was a hitch and that there had been no perfect agreement on
 23 that. And we now have objections to that. And then a
 24 concession that there was a disagreement in certain respects
 25 and that there's a dispute that has to be resolved by me.

1 I will do that. I haven't done that. I don't know that
 2 that's important for the purposes of this morning's hearing.
 3 But if there's going to be a dispute about the number of
 4 interrogatories and the number of witnesses and other things,
 5 I'll iron it out. I'm sorry that we didn't get that
 6 straightened out earlier.
 7 Well, with all that, I'll turn to Renfroe and ask it to
 8 tell me with that situation, what does it think we need to do
 9 this morning.
 10 MR. HELD: Your Honor, could we confer briefly with
 11 our client?
 12 THE COURT: I think you can. And if you want to
 13 confer not only with your client but with the lawyers for the
 14 other side, it may be -- You might argue with some of the
 15 things I've said in the way of procedures and posture and
 16 what the burdens are. I'm pretty well satisfied myself right
 17 now as to what I've said is where we find ourselves. The
 18 question is what to do with where we are and what I think the
 19 burdens are. So let's let you talk to your client, and you
 20 all talk to anybody you want to, and I'll take a 10-minute
 21 recess.
 22 (Recess from 9:53 a.m. to 10:11 a.m.)
 23 THE COURT: Keep your seats.
 24 Before you respond or anybody else does to where we are,
 25 it perhaps would have been better had I said this before we

1 had our recess. I don't know how important it is or might
 2 be, but the preliminary injunction mandatorily enjoined the
 3 parties, the defendant and their agents or persons acting in
 4 concert with them, to deliver forthwith to counsel for
 5 plaintiff all documents whether originals or copies. There
 6 may be some argument about that, but to me that meant no
 7 copies can be retained by the defendants or their agents who
 8 were within the purview of that injunction. So that not only
 9 the originals but all copies shall be delivered.
 10 Now, that was my interpretation of it. You can argue
 11 with it, but that's the way I'm interpreting it. And the
 12 injunction said further enjoin the defendants and their
 13 agents "not to further disclose, use or misappropriate any
 14 material described in the preceding paragraph unless to law
 15 enforcement officials at their request." If all copies were
 16 delivered forthwith, there were no copies in the possession
 17 of the defendants or within the control of the defendants or
 18 their agents, then it would be easy to comply with not using
 19 them, because you wouldn't have them, you wouldn't have any
 20 access to them.
 21 But the language, I think, speaks for itself there. Now,
 22 whether that expression from me, just reading that language,
 23 what impact it might have on any decisions strategically that
 24 either side of this controversy might have, I don't know.
 25 You may have thought or have seen the same thing I see. So

1 there's nothing new. It's on a piece of paper. But I didn't
2 talk about it when I asked you to take a look at where you
3 wanted to go.

4 But now you've heard me elaborate a little further. What
5 says Renfroe under the circumstances?

6 MR. HELD: Your Honor, Renfroe, if given the choice,
7 would rather proceed on both civil and criminal. We have
8 conferred, however, with opposing counsel, and they do not
9 want to proceed with the criminal. They want to have all the
10 safeguards there.

11 THE COURT: Well, of course, they don't think a
12 criminal proceeding would be appropriate, and I haven't
13 decided whether to start that process.

14 MR. ROGERS: Thank you for that clarification.

15 THE COURT: So there's been no decision by me as to
16 that.

17 What would really kind of happen in sequence would be is
18 if your preference is as you say it is, to proceed in both of
19 them, the only thing I could do would be either to say right
20 now that I'm going to proceed both ways, and pass on your and
21 agree with you that criminal contempt would be an appropriate
22 inquiry. Not that any sanction should be imposed, because
23 that would be a matter that the procedure would take care of
24 and would lead to one way or the other.

25 Or put it off and make that decision after thinking more

1 about it. And I have not, and I think I confess that I have
2 not, passed that in my own mind as to whether that's an
3 appropriate track to follow. And I haven't made that choice.

4 So it would appear that not having made it, your choice
5 is either to wait for me to make the choice and postpone the
6 civil contempt thing in which for the time being, at least,
7 you are giving up not forever, but you are giving up any
8 coercive order to require the compliance with those mandatory
9 words. Not forever, but until I make my choice. And if I
10 make my choice that I'm only going to proceed civilly, we'll
11 be back here where we are right now. If I decide that both
12 avenues are open and appropriate, then I'd start the other
13 avenue. Now, that's where you are.

14 MR. HELD: In light of that, Your Honor, we would
15 rather proceed with the civil contempt hearing at this time.

16 THE COURT: All right. Then if you have an opening
17 statement, because I think, as I've said, and I'm not backing
18 up from that, and I don't hear you trying to talk me out of
19 it, you have the burden. So I don't know what evidence you
20 have to offer.

21 I know that there's no point today or any other time, for
22 that matter. You might want to repeat to refresh my
23 recollection of what the undisputed facts are or what I've
24 already found as to be the facts, but any other facts that
25 are appropriate for the determination of whether there is an

1 ongoing violation of that mandatory injunction and that I
2 don't already have, you've got to prove by clear and
3 convincing evidence.

4 MR. HELD: Yes, Your Honor.

5 If I understood what Your Honor said, the only issue
6 before the court today is whether or not the parties have
7 complied with the production of the 15,000 pages that they
8 said they took and that they admitted taking in their answer
9 to the complaint.

10 THE COURT: I think that's a fair shorthand way of
11 putting it.

12 MR. HELD: That being the case, I assume Your Honor
13 would not want to hear evidence about the delays in the
14 production of those documents and what excuses there were for
15 all the delays and the delivery of the documents to the
16 attorney general of the state of Mississippi.

17 THE COURT: Although I think the burden of proof is
18 on you, any ameliorated or mitigating circumstances that they
19 might offer would be theirs, not for you, to either reveal to
20 me and knock them down, or knock them down before you even
21 reveal them to me. That's their problem right now. Your
22 problem, to meet your burden is to show by the language of
23 that that they are not in compliance, not right now, and to
24 what degree.

25 MR. HELD: All right, sir. We, having delivered up

1 here because we didn't think that was going to be an
2 immediate issue, but we're having to deliver to the court as
3 we speak the documents that were turned over by the
4 defendants and Mr. Scruggs.

5 THE COURT: Under the circumstances, although the
6 further language of that order says all documents shall be
7 kept by plaintiff's counsel under lock and key, no copy so on
8 and so shall be revealed to anyone, under the circumstances
9 right now you are released from that limitation. There is no
10 way that you can proceed without telling me to the extent you
11 need to for the purposes of this inquiry what was delivered
12 and what you find therefore, after you find it, was absent.

13 MR. HELD: All right, sir.

14 Now, I didn't pick up, Your Honor, on what you said in
15 response to my inquiry about whether or not we should go into
16 in our burden of the delays and the production.

17 THE COURT: No. I think that would be an entirely
18 appropriate inquiry. And that's why I don't know what your
19 thought process was that led you and your client to suggest
20 the alternative criminal contempt, but that would be a matter
21 for that --

22 MR. HELD: Okay.

23 THE COURT: -- because that would be evidence that
24 would bear on contumacious, allegedly contumacious, conduct
25 between the time of the injunction and the time it was

1 complied with. Now, the question we're talking about, was it
2 complied with?

3 MR. HELD: All right, sir.

4 THE COURT: Is it complied with?

5 PLAINTIFF'S OPENING STATEMENT

6 MR. HELD: It's our position, and I'll state this as
7 my opening statement, that 15,000 pages of documents were
8 taken by the defendants through their admission in their
9 answer to our complaint. And it's our position, and we
10 believe the evidence will show Your Honor, that only about
11 8,000 pages were returned to us. We don't know what they
12 took. All we know is they admitted --

13 THE COURT: That's why I said this is a unique and
14 difficult case from your perspective.

15 MR. HELD: That's right.

16 We go by their own admission that they took 15,000, and
17 we'll show Your Honor that they returned approximately 8,000.
18 We don't know what the other documents that were taken
19 consist of. We don't know where they are. We don't know
20 whether copies were made by the defendants and their
21 attorneys. And obviously if only 8,000 pages were returned
22 to us, copies, if they were made, were not returned. So
23 basically we hope to show that. We'll show Your Honor what
24 15,000 documents look like.

25 THE COURT: You can show by arithmetic that there is

1 a difference between 15 and eight.

2 MR. HELD: Yes. We think we can do that.

3 THE COURT: Well, I don't know whether we have room
4 here for 15,000 documents.

5 MR. HELD: No. You'll be surprised. It's not
6 voluminous.

7 THE COURT: But you're only giving me eight, because
8 that's all you've got, you say.

9 MR. HELD: But we're going to bring three boxes that
10 contain 15,000 pages of paper for use in copying as it came
11 from the printer.

12 THE COURT: I thought you said they only returned
13 eight.

14 MR. HELD: That's right.

15 THE COURT: And you are going to give me 15?

16 MR. HELD: I'm going to show you blank pages, three
17 boxes containing 15,000 pages, show you the difference in
18 what they gave us.

19 THE COURT: To show me what that would look like?

20 MR. HELD: Exactly.

21 THE COURT: Well, you've made your opening
22 statement, and I'll look forward to hearing from you in the
23 way of evidence along those lines.

24 But if either of the named defendants or Mr. Scruggs and
25 its lawyers want to respond to that in the way of any opening

1 statements, you might say, I'll be glad to hear from you.

2 Mr. Hawley?

3 DEFENDANTS' OPENING STATEMENT

4 MR. HAWLEY: Yes, Judge Acker. Greg Hawley. And as
5 you know, Your Honor, I represent Kerri Rigsby and Cory
6 Rigsby, who are here today. They've been in this court
7 before, and I know you have met them.

8 Your Honor, it's the Rigsbys' position, and the record is
9 clear on this in response to Mr. Held's argument, that they
10 did copy documents that they thought reflected crimes and
11 fraud by State Farm, and they found those documents through
12 their employment as adjusters for Renfro Company, who is the
13 plaintiff in this action.

14 The first thing that the court should know, and I don't
15 know where this misunderstanding started, but the number of
16 documents copied -- Recall, you've heard the documents that
17 were copied the weekend of June 3rd as referred to as the
18 data dump weekend. I think that's been in some of our
19 papers. And there were three sets made during that weekend.
20 One set was delivered on Monday, June 5th, to the United
21 States attorney, one set was delivered to the Mississippi
22 attorney general, and one set was retained by the Rigsbys and
23 stored in a friend's attic for several weeks, if not months.

24 The sum total of those three copies was 15,000 pages of
25 documents, approximately. Five thousand each, approximately.

1 Again, five, six, seven, I can't tell you. Maybe it was even
2 eight. But there's been just a huge misunderstanding in the
3 number of documents copied on that data dump weekend, but I
4 think that's a quick and easy explanation.

5 The most important thing as far as the Rigsbys are
6 concerned, the record is clear, you have the transcripts of
7 both of their depositions that Ms. Stanley took in January
8 that they have not had any of these documents in their
9 possession since July or August of last year.

10 This lawsuit was filed on September 1st. So before this
11 lawsuit was filed, they had no Katrina-related documents that
12 are at issue in this lawsuit and at issue in the injunction.
13 And so from a legal standpoint, their ability to comply with
14 the injunction without possessing documents is an
15 insurmountable hurdle.

16 Now, the injunction was issued on Friday, December 8th,
17 as you know, and the bond was paid early in the morning on
18 Monday the 11th. And the Rigsby sisters were notified of the
19 injunction promptly by counsel by telephone and e-mail and
20 otherwise, and they testified to that in their deposition
21 testimony. And Cori Rigsby telephoned Mr. Scruggs. She
22 understood her obligation was to call Mr. Scruggs to see if
23 she could get that copy set back from him. This was the copy
24 set that was delivered to him late July, early August.

25 THE COURT: I thought you said that one copy was put

1 in an attic, one copy to the U. S. attorney, and one copy to
2 the attorney general?

3 MR. HAWLEY: I missed out on one critically
4 important fact, and you just reminded me of it. One copy was
5 put in Michele's attic for several weeks until about
6 August 1st, was delivered by Cori Rigsby to the Scruggs Law
7 Firm in Moss Point, Mississippi, around August 1st. It was
8 kept in an attic for safekeeping for weeks, almost two
9 months. So it was delivered to The Scruggs Law Firm about
10 August 1st, ballpark, within a week or two of August 1st.

11 So at that point the Rigsbys were no longer in possession
12 of any of these documents that are at issue. And the one
13 copy set that they had delivered to The Scruggs Law Firm
14 around August 1st -- Let me go back to December. Cori
15 Rigsby --

16 THE COURT: Well, we may be getting into a problem
17 that I have dealt with in the criminal context of
18 constructive possession, because you haven't addressed yet,
19 and I don't know what the positions are, with respect to the
20 relationship between the Rigsbys and Mr. Scruggs' law firm
21 from the moment of the delivery until the injunction was
22 issued.

23 MR. HAWLEY: Yes, sir.

24 THE COURT: And there may be -- You know, I don't
25 want to anticipate, because I haven't decided whether to

1 start a criminal contempt inquiry. But what you describe or
2 what you are telling me would be relevant in that inquiry.
3 It might be relevant in this inquiry because if the Rigsbys
4 didn't have possession or control or access or any
5 possibility of obtaining compliance under the words
6 "forthwith," that might excuse them entirely from ever having
7 complied. But as it turned out, it was you, the Rigsbys'
8 lawyers, who delivered the documents to Mr. Held's office,
9 which would suggest that there was a connection by which the
10 Rigsbys were in a position to comply. They did comply. And
11 that's what you are saying, that they complied. And that's
12 why we're here: Did they comply?

13 Well, if they couldn't comply, they didn't have to
14 comply, perhaps. There was no way they could comply, but
15 they did comply. The question then for the criminal inquiry
16 would be, did they adequately comply, did they do or did they
17 engage in contumacious conduct? And that would be something
18 to be addressed in a criminal inquiry.

19 But I start today, did they comply, have they complied?
20 And I think you are saying that they have complied or
21 somebody has complied on their behalf. And you delivered the
22 documents, their lawyer. Now, if you delivered all of them,
23 then I think the civil inquiry is complete. If they have no
24 copies, if they know and can tell me that they know that
25 their employer, Mr. Scruggs, if he is their employer and is

1 acting in concert, has none of them, is using none of them,
2 is not going to use any of them, then I think the inquiry is
3 complete. But the burden is on them. And I don't know how
4 much you want to tell me when the burden's on them.

5 But that's where I see -- And this is repeating, I
6 realize, but this gets back to, I think, and I think this has
7 been here all the time, the connection between Mr. Scruggs
8 and the defendants, your clients. He had possession of them
9 at the time of the injunction. And you, representing your
10 clients, delivered eventually. I think that's undisputed.
11 The question, I think, is really have all of them been
12 delivered and all copies of them been delivered, none
13 retained?

14 Now, you can't control, and the injunction didn't purport
15 to try to control, delivery to and use by the attorney
16 general of Mississippi. That's hairy in and of itself,
17 but -- because there's been communication back and forth
18 apparently between the attorney general and Mr. Scruggs and
19 his firm. But that's a different inquiry. I'm just
20 trying to decide today based on whether or not Renfroe can
21 meet its burden of proving whether all the documents have
22 been delivered that were copied, all of them, and that there
23 are none retained by your clients or their agents. And I
24 think you are saying that you were waiting for Mr. Held to
25 prove that.

1 MR. HAWLEY: Yes, Your Honor.

2 THE COURT: All right. You've made your opening
3 statement.

4 Do Mr. Scruggs' lawyers have any?

5 MR. HAWLEY: Can I make one last point, Your Honor?

6 THE COURT: Sure.

7 MR. HAWLEY: In terms of the reasonable efforts
8 standard, Cori Rigsby understood her obligation to contact
9 The Scruggs Law Firm and did so, in her own words, shortly
10 after December 12th. The injunction became effective when
11 the bond was posted on the 11th. She called The Scruggs Law
12 Firm the next day or shortly thereafter.

13 You may recall the testimony that the AG's office
14 contacted Mr. Scruggs in the letter the court has on
15 December 12th. He received the letter and sent his set of
16 those documents to the attorney general on the 12th. And by
17 the time Cori Rigsby contacted Mr. Scruggs to say: Where are
18 those documents we delivered to you back in August or July?
19 he said: I got a request from the attorney general; I have
20 sent them to the attorney general.

21 THE COURT: Well, let me interrupt you. I thought
22 you said that the Rigsbys had given a copy of them to the
23 attorney general.

24 MR. HAWLEY: They gave them a copy on June 5th at
25 the end of the data dump weekend. There are three sets.

1 THE COURT: So that from what you are telling me,
2 the attorney general had two complete sets of the documents,
3 one from the Rigsbys and one from Mr. Scruggs, which was
4 identical, supposedly?

5 MR. HAWLEY: Your Honor, I can't speak for the
6 attorney general, but that is also my understanding. But as
7 a legal matter, the inability of the Rigsbys to comply with
8 the injunction, I think, is evident.

9 Now, now, it is true that we made extra efforts to try to
10 get those documents back from the attorney general.

11 THE COURT: Well, Mr. Held's office only has one
12 copy of the documents.

13 MR. HAWLEY: Yes, sir.

14 THE COURT: Can you tell him and me where the other
15 copies of the documents now are?

16 MR. HAWLEY: My understanding is this, Your Honor.
17 There were three sets made on the data dump weekend. On
18 June 5th the U. S. attorney picked up one set.

19 THE COURT: So that the U. S. attorney has a copy?

20 MR. HAWLEY: In the Southern District of
21 Mississippi.

22 THE COURT: The Southern District of Mississippi?

23 MR. HAWLEY: Yes, sir.

24 THE COURT: I had missed out on that, I had missed
25 out on the U. S. attorney.

1 MR. HAWLEY: It's either the U. S. attorney or the
2 FBI, and I'm not sure which actually has possession. But the
3 federal investigators picked up one set on Monday, June 5th.
4 State investigators picked up one set on Monday, June 5th,
5 and one set was stored in someone's attic for several weeks,
6 if not months. That set was delivered to The Scruggs Law
7 Firm on or about August 1st.

8 THE COURT: And it was that set that was given to
9 the attorney general of Mississippi?

10 MR. HAWLEY: That is my understanding.

11 THE COURT: Where did you get the copy that he
12 delivered to Mr. Held?

13 MR. HAWLEY: Your Honor --

14 THE COURT: You've described three, and now we've
15 got four, I think, if I count right.

16 MR. HAWLEY: I don't think so, Your Honor. The set
17 that resided at the Scruggs firm for a period of months, my
18 understanding is that set was sent to the attorney general
19 pursuant to a request by the attorney general on Tuesday,
20 December 12th.

21 THE COURT: And sent back from the attorney general
22 to Mr. Scruggs?

23 MR. HAWLEY: At my request and counsel for the
24 Rigsbys' request, repeatedly throughout December and January.
25 The attorney general's office finally agreed, after the grand

1 jury proceedings were over and after the Rigsbys had appeared
2 at the grand jury, to release those documents. I had them.
3 They sent them directly to my office. We did not open them
4 or touch them and we hand-delivered them to Jack Held's
5 office.

6 THE COURT: All right.

7 MR. HAWLEY: So it is through our efforts that those
8 documents --

9 THE COURT: Were delivered.

10 MR. HAWLEY: -- were delivered. They did reside at
11 The Scruggs Law Firm for a month, but I still think that as
12 of December 12th, when they were delivered by the Scruggs
13 firm to the AG's office, it was impossible for the Rigsbys to
14 comply with the injunction.

15 THE COURT: All right. Let's see what Mr. Scruggs
16 has to say, if anything.

17 MR. HAWLEY: I need to bring this up first. But
18 this court on February 8th directed us as counsel for the
19 Rigsbys that it was the court's view that, quote, they have
20 complied with the mandatory preliminary injunction. And you
21 ordered us to notify the Eleventh Circuit Court of Appeals of
22 such.

23 THE COURT: Well, I don't know whether that was
24 purported to be a finding of fact or final statement on that.
25 What I wanted to be sure is that the Eleventh Circuit knew

1 that -- Where is the Eleventh Circuit proceeding in process?
2 Have you all --

3 MR. HAWLEY: I think it's been fully briefed, Your
4 Honor.

5 THE COURT: Is it set for oral argument?

6 MR. HAWLEY: No notice of that, Your Honor.

7 THE COURT: I wanted them to know that there had
8 been an attempt to comply by you and that they knew that.
9 But there may be an argument about what the legal effect is
10 of my words, my choice of words, but I appreciate your
11 pointing it out. I'm not sure what I intended by that
12 language. I don't know that I intended to foreclose by that
13 this inquiry today. If I did, we wouldn't be here. I don't
14 think I intended that.

15 MR. HAWLEY: And, Your Honor, I thought you might
16 have intended that.

17 THE COURT: Well, I appreciate your -- Well, you
18 would agree with me that, or would you, that if that is the
19 legal effect of what I said, it would have been a good idea
20 for you to tell me that in a pleading before today so that I
21 would have either agreed with you or not agreed with you, and
22 if I had agreed with you, we wouldn't be here today. Would
23 you agree with me on that?

24 MR. HAWLEY: I agree with you on that, Your Honor,
25 and I was about to say that this order suggests to me that

1 the coercive effect of this kind of hearing with respect to
 2 the Rigsbys is moot.
 3 THE COURT: And you have said that it's moot, which
 4 it would be if you had fully complied. And that's why the
 5 inquiry here is limited to coercive effect; and if there's
 6 been full compliance, there's nothing to coerce. And you say
 7 that that's the situation, and they have the burden of
 8 proving that there are some documents either retained, copies
 9 of them, or that they were all not delivered. And you've
 10 told me what your version of that is, and let's see if Mr.
 11 Scruggs' version is consistent with that. I expect it will
 12 be. Let's see.

13 MR. HAWLEY: Thank you.

14 THE COURT: Mr. Rogers?

15 MOVANT'S OPENING STATEMENT

16 MR. ROGERS: Thank you, Your Honor.

17 Judge Acker, Bruce Rogers. Along with Frank Bainbridge
 18 and Rebecca Eubanks, we have the privilege of representing
 19 Mr. Dick Scruggs and his law firm. He's present in court. I
 20 introduced him to Your Honor. He's been a member of the
 21 Mississippi Bar for over 30 years.

22 THE COURT: Glad to have you, Mr. Scruggs.

23 MR. SCRUGGS: Thank you, Your Honor.

24 MR. ROGERS: With permission, Your Honor, we are a
 25 non-party. And he's specially appearing, and I do not wish

1 for his appearance today or my appearance today to somehow
 2 waive our jurisdictional --

3 THE COURT: It does not.

4 MR. ROGERS: Thank you.

5 Your Honor had a Second Circuit case that you relied on,
 6 the Alemite case, in your January 19 order that brought us
 7 here. And on behalf of Mr. Scruggs, our two points to Your
 8 Honor in opening are that we believe, again, a more
 9 persuasive authority is the Doctor's Associates case, and we
 10 believe the evidence would support that because the
 11 relationship between The Scruggs Law Firm and the defendants
 12 was both attorney-client in one sense but also principal
 13 agent in another sense, and the Doctor's Associates case
 14 talks about that issue, and we would preserve that issue for
 15 consideration by this court.

16 The other point we make of the two points is that --

17 THE COURT: Well, are you appearing amicus curiae or
 18 any other way in the Eleventh Circuit case?

19 MR. ROGERS: No, Your Honor. And I do recall you
 20 made a suggestion to that effect, but we are not appearing
 21 amicus in the Eleventh Circuit.

22 The other point, Your Honor, is that after Your Honor
 23 explained the court's position in mid-January and after
 24 looking at whether or not to appeal or file a petition for
 25 mandamus, ultimately a decision was made to divest The

1 Scruggs Law Firm of any documents to the extent that any
 2 remained that were Renfroe documents. The main body of those
 3 documents are these boxes that were copied and subsequently
 4 delivered to the federal law enforcement authorities and the
 5 state law enforcement authorities, and then even more
 6 subsequent to that, a set was given to Mr. Scruggs. And
 7 those were then on December 12th sent to the attorney
 8 general, as you heard from Mr. Hawley, and have since been
 9 returned to Renfroe's counsel when the attorney general
 10 delivered those back to Mr. Hawley.

11 But notwithstanding our position that we are not subject
 12 to this court's jurisdiction and not subject to this court's
 13 injunction, we nevertheless have complied. And Mr. Scruggs
 14 is here for that purpose, Your Honor, and we are prepared to
 15 proceed and answer any questions from the court or from
 16 opposing counsel.

17 THE COURT: Thank you, Mr. Rogers.

18 Does Renfroe have any live testimony or deposition
 19 testimony that I don't already have other than the boxes
 20 themselves which contain, if we want to count them, some
 21 number of documents, be they 8,100 or 8,001 or 7,999 or
 22 whatever their number is? Do you have any testimony, Ms.
 23 Stanley?

24 MS. STANLEY: Your Honor, we would like to call the
 25 Rigsby sisters to establish the volume of documents at issue.

1 So far we haven't had any evidence of that. All we've had is
 2 lawyer talk. And also to establish the relationship between
 3 the Rigsby sisters and Mr. Scruggs.

4 THE COURT: All right. Which of the Rigsbys? Are
 5 they both Rigsbys or do we have a Rigsby and a Moran?

6 MS. STANLEY: It is my understanding, Your Honor,
 7 that Ms. Moran has taken back her maiden name --

8 THE COURT: Okay.

9 MS. STANLEY: -- so they are both Rigsbys.

10 THE COURT: Well, you take which Rigsby you want
 11 then.

12 MS. STANLEY: Yes, sir. The plaintiff would like to
 13 call Cori Rigsby as an adverse witness.

14 THE COURT: Ms. Rigsby, if you would, step around
 15 and be sworn.

16 CORI RIGSBY, sworn/affirmed

17 BY THE COURTROOM DEPUTY:

18 Q. Please state your name for the record.

19 A. Cori Rigsby.

20 MR. HAWLEY: Ms. Stanley, excuse me. Could I
 21 interrupt for just one moment?

22 MS. STANLEY: Sure.

23 MR. HAWLEY: Your Honor, Ms. Stanley stipulated on
 24 the record and in the deposition a stipulation with respect
 25 to waiver of the attorney-client privilege, and I would just

1 like to get the same stipulation here in court that we had in
 2 the deposition. On behalf of the Rigsbys in those
 3 depositions, we let Ms. Stanley inquire about this
 4 relationship because it's important to this proceeding, as
 5 the court knows, and err on the side of a liberal
 6 interpretation of the kind of inquiry that may come up and
 7 that otherwise might be privileged. And to the extent we let
 8 her go a little bit far in that inquiry, I want to make sure
 9 there's no attempt to use that as a waiver of the
 10 attorney-client privilege.

11 THE COURT: Well, we'll have to wait. I think to
 12 address that at a moment in the questioning in which you
 13 think there was no waiver and raise the attorney-client
 14 privilege, and then we'll argue whether there has been a
 15 waiver, I guess. That's the only way I know to proceed.

16 MR. HAWLEY: Yes, Your Honor. But we had a
 17 stipulation that she would not seek such a waiver. And I'd
 18 like to seek that same stipulation here in court if possible.

19 THE COURT: Well, if she asks the defendant or the
 20 deponent, and she is a defendant -- I mean the witness to
 21 waive the attorney-client privilege, and you say that she's
 22 agreed and stipulated not to make that inquiry, then you can
 23 get up and say she's agreed not to. But to address it all up
 24 front, I don't know what she's going to ask her.

25 MR. HAWLEY: Thank you, Your Honor.

1 MS. STANLEY: Your Honor, one point before I get
 2 started with this witness. Mr. Hawley brought up your
 3 February 8th order directing the attention of the Eleventh
 4 Circuit to whether or not the defendants had complied. And
 5 your order was issued before Renfroe filed its replies to the
 6 responses to show cause on February 16th. And it was in
 7 Renfroe's replies that Renfroe pointed out that less than the
 8 number of documents taken had actually been returned.

9 THE COURT: I think that is the sequence. What
 10 significance all of that might have, I can see your point.

11 MS. STANLEY: Okay.

12 DIRECT EXAMINATION

13 BY MS. STANLEY:

14 Q. Ms. Rigsby, I'd like to talk to you this morning about
 15 the volume of documents that were copied and given to the
 16 three recipients, the Department of Justice, or the FBI, the
 17 Mississippi attorney general, and Mr. Scruggs.

18 A. Okay.

19 Q. Okay?

20 Now, as I understand it, there were four different
 21 batches of documents that you copied. The first batch of
 22 documents was the initial ones that were copied prior to your
 23 first February meeting, February '06 meeting, with Mr.
 24 Scruggs, and that would include the sticky note and the
 25 McIntosh issues; is that correct?

1 A. That's correct.

2 Q. And the second batch of documents that you copied was --
 3 And let me go back just a second.

4 That first batch of documents that you copied and gave to
 5 Mr. Scruggs on your first meeting in February of '06, as I
 6 understand it, you testified that that was about 20 pages or
 7 so; is that correct?

8 A. I don't remember testifying to the number of pages. It
 9 was sporadic. There was a small amount of documents that we
 10 gave him in that first February meeting, that is correct.

11 Q. Okay. And would the number be somewhere in the vicinity
 12 of 20 pages?

13 A. That could be it. I'm not disputing it. I just don't
 14 quite remember.

15 Q. Very well.

16 And then there was a second batch of documents that you
 17 testified about in your deposition, and that included e-mails
 18 that you would come across periodically plus the engineering
 19 reports that you went to the Biloxi office and made hard
 20 copies of engineering reports out of the State Farm files;
 21 correct?

22 A. Correct.

23 Q. Do you recall approximately how many pages that second
 24 batch of documents was?

25 A. When you say batch, it did not occur on one day. It was

1 a process of several months, so a piece of paper here a copy
 2 there. So, no, I do not recall.

3 Q. So somewhere between 20 and 50 pages?

4 A. That sounds --

5 THE COURT: When we talk about batching, that
 6 implies a grouping, number one, and it implies to me a
 7 connection time wise. You could copy as maybe she's
 8 suggesting, one copy here, one copy there, one copy next
 9 week. And by two weeks later, you now have a batch, whether
 10 it's 20 or 50. That could be a batch. And the way I
 11 understand the questioning to be going, the way you are
 12 describing a batch, the way you determine that this is a
 13 batch, it becomes a batch when you deliver it to Mr. Scruggs.
 14 Is that how you are determining what constitutes a batch?

15 MS. STANLEY: Yes, Your Honor.

16 THE COURT: Okay. So we've got one batch that may
 17 or may not be around 20, and now we've got a batch, even
 18 though not copied all precisely the same moment, which may be
 19 50 or thereabouts?

20 MS. STANLEY: Right.

21 THE COURT: And that becomes the second batch.

22 MS. STANLEY: Your Honor, I have taken the liberty
 23 of starting a brief time line that I think will help us
 24 focus.

25 THE COURT: All right.

1 MS. STANLEY: If I could offer just this
2 demonstrative evidence.
3 THE COURT: If any one of you can't see what she's
4 writing, then you can move around so you can be sure you can
5 see it.

6 MR. ROGERS: Thank you, sir.

7 BY MS. STANLEY:

8 Q. So under the time line here -- I don't know if you can
9 see it.

10 A. I can. I mean, I'm sorry.

11 MS. STANLEY: Now they can't.

12 MR. ROGERS: That's all right --

13 BY MS. STANLEY:

14 Q. All right. This first batch that I'm talking about were
15 the initial documents that included the McIntosh documents,
16 and those were copied and given to Mr. Scruggs at your first
17 meeting in February of '06; is that right?

18 A. '06? Yes, ma'am, that's correct.

19 Q. So I'm just going to write February '06 next to this
20 first batch here.

21 And then you copied another series of documents, and then
22 sometime in April of '06 you had another meeting with Mr.
23 Scruggs and another lawyer who has not been identified. And
24 sometime in that period of time you gave Mr. Scruggs the
25 additional -- the documents, the second batch of documents,

1 that included miscellaneous e-mails and the engineering
2 reports that you copied?

3 A. Some -- During that time, yes. I'm not sure it was one
4 meeting that I gave them all to him, but yes, during that
5 time.

6 Q. Okay. So it was approximately April of '06?

7 A. Yes. That sounds about right.

8 Q. Okay. And then the third batch of documents that I'm
9 talking about are the documents from the data dump. And we
10 heard testimony that that was the weekend of June 3rd of '06;
11 correct?

12 A. That's correct.

13 Q. Okay. And then --

14 THE COURT: Well, pause right there and let's talk
15 about the number in the data dump.

16 MS. STANLEY: Okay.

17 BY MS. STANLEY:

18 Q. Yes. And this was approximately 20 plus or minus and
19 this was 20 to 50 plus or minus; right?

20 A. Yes.

21 Q. Okay. Now, let's talk about the number from the data
22 dump. How many documents did you copy during the data dump?

23 A. Well, we printed out documents, and then we copied what
24 we had printed out.

25 Q. Okay.

1 A. So when you say copy, there was a total of
2 approximately -- And I base this on how many reams of paper
3 we purchased for the printing and the copying, and I'm
4 guessing that the total amount was right around 15,000, and
5 that would be all three sets of copies.

6 Q. Okay.

7 Now, do you remember testifying in your deposition that
8 there were 15,000 documents that you copied?

9 A. Yes.

10 Q. Okay. So when you told me that there were 15,000
11 documents, what you said was some of those documents -- that
12 those documents had been copied three times, so there were
13 5,000 documents that you copied them three times?

14 A. I didn't say that.

15 Q. No. What you told me was that you copied 15,000
16 documents.

17 A. And I did. We copied them.

18 Q. All right.

19 Now, do you recall approximately how many boxes those
20 15,000 documents filled?

21 A. I believe it filled six boxes.

22 Q. Do you recall testifying differently when I took your
23 deposition?

24 A. I do not.

25 Q. Okay.

1 Let me give you your deposition and ask for you to please
2 look at Page 91 beginning at Line 24.

3 A. Okay.

4 MS. STANLEY: May I approach, Your Honor?

5 THE COURT: You may.

6 A. Page?

7 BY MS. STANLEY:

8 Q. 91. Look at the question beginning on Line 24 of Page
9 91. And remember when you gave your deposition, you were
10 under oath, were you not?

11 A. I was.

12 Q. And when I asked you, I said: Okay. So you copied the
13 documents, the 15,000 pages. I assume you put them in boxes?

14 A. Right.

15 Q. And you answered "Yes"?

16 A. Okay.

17 Q. "About how many boxes are we talking about here?" And
18 you said "Nine or ten"?

19 A. Okay.

20 Q. So would that be more accurate than in your recollection
21 this morning?

22 A. Well, actually what it was, it was two boxes that were
23 full, and there was an extra that didn't fill up a third, so
24 it wasn't three full boxes for a group, but there was a
25 little bit of overflow on the two boxes per copy.

1 Q. Okay.

2 A. Does that make sense?

3 Q. So you are telling me that the nine or ten boxes that you

4 talked about here --

5 A. They weren't all full. Okay? Because I divided them

6 into three sets. So two boxes for each set were absolutely

7 full. And then there was a third box that had a little bit

8 of overflow in it, but it was not full. So each person

9 picked up three boxes, but the third box wasn't full of

10 documents. It's just that those last few wouldn't fit in the

11 two boxes.

12 Q. Okay. So each set of documents, we're talking three

13 sets, so each set was two full boxes plus a part of another?

14 A. Plus a little overflow. So when they came to pick up, I

15 remember there was about nine boxes in my dining room. So

16 this was accurate. But when you were asking me how many

17 boxes did it fit into, it really fit into most -- two, two,

18 and two with a little bit of overflow in the third box for

19 each group. Yes, ma'am.

20 Q. Okay.

21 THE COURT: Were the February and April documents in

22 those boxes or had those already been delivered to somebody?

23 THE WITNESS: Those had already been delivered.

24 THE COURT: And did you make three copies or three

25 sets of those or just one?

1 THE WITNESS: Just one.

2 THE COURT: Just one?

3 THE WITNESS: Yes, sir.

4 THE COURT: So that now in the data dump though in

5 June, you made three copies; is that right?

6 THE WITNESS: Yes, sir.

7 THE COURT: So when you said in your deposition

8 15,000 documents, you were talking about, or were you talking

9 about, actual documents, 15,000 of them, that were in that

10 database that were copied? Or are you talking about a less

11 number that were copied three times?

12 THE WITNESS: Less that were copied three times. I

13 think the semantics got me confused. We printed the

14 documents. So when she said how many did we copy --

15 THE COURT: Well --

16 THE WITNESS: -- we copied her 15.

17 THE COURT: Well, if you printed 15,000 --

18 THE WITNESS: We printed about five.

19 THE COURT: -- so 15,000 documents. Did you say you

20 printed 15,000?

21 THE WITNESS: No, sir.

22 THE COURT: So off of the printer there came 15,000

23 separate documents?

24 THE WITNESS: No, sir.

25 THE COURT: There came 5,000 documents and then

1 5,000 and then 5,000, or three copies of one document and

2 then three copies of another document and three copies of a

3 third document --

4 THE WITNESS: No, sir.

5 THE COURT: -- separated out into three piles? How

6 did you do that?

7 THE WITNESS: We printed out roughly 5,000 copies

8 from the printer. It was a laptop and a printer. It was

9 very slow going. So we printed out roughly 5,000 copies, and

10 then we took those copies to an office and we made copies on

11 a copying machine, two more sets. So the total number of

12 paper that I bought that day was roughly 15,000 pieces of

13 paper, which was three different sets of copy. The original

14 was roughly 5,000 copies.

15 THE COURT: So that what you are telling me is that

16 without knowing the precise number, there were three sets of

17 the same thing and each of those sets was about 5,000 copies?

18 THE WITNESS: Yes, sir.

19 THE COURT: All right.

20 BY MS. STANLEY:

21 Q. When you say you put them in boxes, what kinds of boxes

22 did you put them in?

23 A. The boxes that the reams of paper came in.

24 Q. How many reams of paper came in a box?

25 A. I believe ten reams.

1 Q. How many pieces of paper in a ream?

2 A. I guess I knew then because I had just bought it. This

3 was months ago. I think there's 500 pieces of paper. I

4 don't know.

5 Q. Okay. So one box then would hold 5,000 pieces of paper,

6 correct, 10 reams at 500 pages a piece?

7 A. When they are wrapped and reamed.

8 Q. Okay. So you've got two boxes that had 5,000 pages a

9 piece in each box to start with; right?

10 A. That seems about right, yes.

11 Q. Okay. So you got at least 10,000 then because you've got

12 two boxes and a little bit more. And you're saying they

13 expanded in size when you copied them?

14 A. Well, they weren't bound by the ream anymore or packed

15 like that. We copied them. You can't stack them straight

16 again. We divided them by groups. There was file folders in

17 there and there was some organization, some rubber bands. We

18 didn't pack it to the rim because I couldn't carry it or pick

19 it up.

20 Q. Okay.

21 Did you tell the newspapers when you were asked before

22 this suit was filed when they asked you how many documents

23 you copied, didn't you tell them you copied 15,000 pages of

24 documents?

25 A. Yes.

1 Q. So --
 2 A. Now, that was on the spot. And like I said, I said
 3 roughly, and I calculated the number of pages I bought from
 4 the store.
 5 Q. But you didn't tell the press that the 15,000 was
 6 actually three copies of one document that you were counting
 7 in the 15,000?
 8 A. No.
 9 Q. So when you told the press that you copied 15,000, it was
 10 pretty misleading, wasn't it?
 11 A. Well, they asked how many copies I made --
 12 MR. HAWLEY: Objection, Your Honor.
 13 A. -- and that's how many I made.
 14 THE COURT: Overruled.
 15 BY MS. STANLEY:
 16 Q. All right. So the data dump, you made approximately
 17 15,000 copies that you are claiming now that that was three
 18 sets?
 19 A. Three sets, absolutely. Yes, ma'am.
 20 Q. Okay.
 21 THE COURT: Three duplicate sets?
 22 MS. STANLEY: Three duplicate sets.
 23 BY MS. STANLEY:
 24 Q. And you are claiming that the duplicate sets took up
 25 enough room in boxes where 10,000 pages had been, but only

1 5,000 were fitting in after you copied them. Is that your
 2 testimony?
 3 A. Yes, it is.
 4 Q. All right.
 5 Now, there was another batch of documents that you found
 6 in the fall of '06. Do you remember that testimony --
 7 A. I do.
 8 Q. -- the fourth batch?
 9 A. Yes, ma'am.
 10 Q. And those were old files that you said did not
 11 necessarily apply to Katrina. They were how-to manuals,
 12 training manuals, and some old information?
 13 A. Manual would be a strong word. But, yes, there were some
 14 training aids --
 15 Q. Training aids?
 16 A. -- miscellaneous documents that were in an old file I
 17 had. Yes, ma'am.
 18 Q. Approximately how many pages?
 19 A. Ten, 15 maybe.
 20 Q. Okay. Okay.
 21 Ten or 15 plus or minus the old documents that we've now
 22 covered with those four batches, all of the documents that
 23 you copied from Renfroe or State Farm files?
 24 A. To the best of my recollection, yes, ma'am.
 25 Q. Okay.

1 THE COURT: You said they were in effect too heavy
 2 for you to lift or carry. Somebody picked them up. Who
 3 picked them up?
 4 THE WITNESS: When the attorney general sent their
 5 person, they picked them up and loaded their car with them.
 6 And when the U. S. attorney sent someone to the house to pick
 7 them up, he loaded his car. And then my girlfriend, Michele,
 8 got on one side and I got on the other, and we loaded her set
 9 in her car.
 10 THE COURT: So that the copying was taking place in
 11 your house?
 12 THE WITNESS: No, sir, it was not. I had two of my
 13 friends were hauling the boxes to the copy place, making the
 14 copies, and bringing them back.
 15 THE COURT: Well, I'm talking about the original
 16 acquisition, you might call it, from the database. Where did
 17 that take place?
 18 THE WITNESS: Yes, sir. That was at my home.
 19 THE COURT: That's what I was asking. That was from
 20 your home because you did have a computer with the documents
 21 stored or access to those documents at your home?
 22 THE WITNESS: Yes, sir, I did.
 23 THE COURT: You took the documents off the computer
 24 and then had them copied outside the home with help?
 25 THE WITNESS: Yes, sir.

1 BY MS. STANLEY:
 2 Q. And the third set of documents, the third set that
 3 eventually ended up with Mr. Scruggs, where was that third
 4 set of documents stored?
 5 A. When?
 6 Q. Between the June 3rd time of the data dump versus the
 7 time in July when you took them to Mr. Scruggs?
 8 A. In my friend's house. I believe she had them up in her
 9 attic, Michele.
 10 Q. How did you get them up in the attic if they were too
 11 heavy for you to carry?
 12 A. Well, I didn't take them to her house. She left the
 13 house on Monday, the same day that the other people came to
 14 pick up the documents. She -- We loaded them in her car and
 15 her husband carried them up to her attic.
 16 Q. Was a set of all four of the batches given to Mr.
 17 Scruggs?
 18 A. When you say batches, the different dates I'm looking at?
 19 Q. Yes. If I can use that --
 20 A. I believe so, yes, ma'am.
 21 Q. All right.
 22 Do you know how many copies Mr. Scruggs made of those
 23 documents?
 24 A. I do not.
 25 Q. Do you know whether or not Mr. Scruggs had those

1 documents burned onto CDs, whether he made electronic copies
 2 of those documents?
 3 **A.** I believe there were some electronic copies made of the
 4 June 3rd documents, not all of them necessarily, but some of
 5 those.
 6 **Q.** All right. Do you know of any other sets of copies of
 7 those documents that were made?
 8 **A.** No, ma'am, I do not.
 9 **Q.** Do you know whether or not other people in Mr. Scruggs'
 10 law firm had copies of those documents, either electronic or
 11 paper copies?
 12 **A.** As far as the February, the April, and the September date
 13 that those three batches, I can't speak for that. The June
 14 3rd, the data dump documents, it's my understanding that
 15 those weren't duplicated at all throughout Mr. Scruggs' law
 16 firm.
 17 **Q.** Okay.
 18 Now, in July you were hired as a consultant with the
 19 Scruggs Katrina Group; correct?
 20 **A.** Yes, ma'am.
 21 **Q.** So I'm going to fill that in on our time line here. That
 22 was July of '06; correct?
 23 **A.** That's correct.
 24 **Q.** And also in July of '06, that's when Mr. Scruggs got his
 25 copy of the data dump documents; correct?

1 **A.** It would be the end of July '06 or the first part of
 2 August. Yes, ma'am.
 3 **Q.** So it would have been within a month of your going to
 4 work for the Scruggs Katrina Group?
 5 **A.** That's correct.
 6 **Q.** Now, the Scruggs Katrina Group is a group of law firms
 7 that are associated together to prosecute claims resulting
 8 from Hurricane Katrina. Is that your understanding?
 9 **A.** That's my understanding.
 10 **Q.** And there are four or five or six law firms that are
 11 associated as part of the Scruggs Katrina Group?
 12 **A.** That's correct.
 13 **Q.** All right. And as a consultant, you worked with all of
 14 the members of the Scruggs Katrina Group; correct?
 15 **A.** That's not correct.
 16 **Q.** Were your services available to all the members of the
 17 Scruggs Katrina Group?
 18 **A.** Yes, they were.
 19 **Q.** Okay.
 20 Let me talk a minute about the relationship, the
 21 attorney-client relationship, and then the employment
 22 relationship.
 23 THE WITNESS: May I have some water?
 24 THE COURT: Sure.
 25 Could you get her a glass of water, please?

1 MR. HAWLEY: Yes, sir (complying).
 2 THE COURT: Thank you, Mr. Hawley.
 3 THE WITNESS: Thank you.
 4 MR. HAWLEY: Yes, sir.
 5 BY MS. STANLEY:
 6 **Q.** Is that better? This is thirsty work.
 7 **A.** Yes.
 8 **Q.** Back on our time line. You and your sister first
 9 retained Mr. Hawley to represent you in February of '06; is
 10 that correct?
 11 **A.** I don't remember.
 12 MR. HAWLEY: Barbara, I think you meant Mr. Scruggs,
 13 not Mr. Hawley.
 14 MS. STANLEY: I apologize. Thank you.
 15 BY MS. STANLEY:
 16 **Q.** Let me start that over.
 17 **A.** Okay. You threw me for a second.
 18 **Q.** My mistake.
 19 Is it correct that you first retained Mr. Scruggs to
 20 represent you in February of 2006?
 21 **A.** Yes.
 22 **Q.** And what triggered your seeking his representation of you
 23 and your sister was your finding the documents that you
 24 turned over to him in February of '06; correct?
 25 **A.** Yes.

1 **Q.** Okay. And is there any written contract or commemoration
 2 of your agreement that you made with Mr. Scruggs in February
 3 of '06?
 4 **A.** Not that I've seen.
 5 **Q.** Okay.
 6 And then you retained Mr. Scruggs and an unnamed lawyer
 7 for an additional representation in April of 2006; is that
 8 correct?
 9 **A.** Correct.
 10 **Q.** And for that April representation, there is an engagement
 11 contract and agreement, a written agreement, between you and
 12 your sister and Mr. Scruggs and this unnamed lawyer that
 13 provides Mr. Scruggs with a 40 percent contingent fee for
 14 that representation?
 15 **A.** I believe when we discussed that -- I don't have a copy
 16 of that. I remember seeing something in writing. I thought
 17 I saw a contingency fee. And I was speculating. I think I
 18 prefaced that during the deposition. It's my belief there is
 19 something in writing. I don't know that it's an agreement,
 20 but I believe I recall that.
 21 **Q.** Okay. To the best of your recollection, you had an
 22 agreement with Mr. Scruggs and this unknown lawyer to
 23 represent you in an additional matter relating to the data
 24 dump documents for which those lawyers are entitled to
 25 perhaps a 40 percent contingency fee?

1 MR. HAWLEY: Your Honor, when she gets into the
2 scope of what the document and the kind of representation
3 was, I think that falls within the privilege, and I would
4 object.

5 THE COURT: Well, it would also be the best evidence
6 rule would come into play because if there is a document,
7 that would be the best evidence of what it contains. But you
8 haven't raised that question. I don't know what the document
9 contains exactly or what the significance of it is. I can
10 see maybe the argument that's about to come as a result of
11 it.

12 MR. HAWLEY: Your Honor, we do not object to
13 questions about the document, or if someone has the document,
14 actually producing it. It's actually discussions about the
15 nature of the representation --

16 THE COURT: Has the document been produced in this
17 litigation to anybody as of yet?

18 MS. STANLEY: No, Your Honor.

19 MR. ROGERS: Nor has it been requested.

20 THE COURT: And there's been no request for it. All
21 right.

22 MR. ROGERS: No, sir. And then we object, if I'm
23 permitted to, in the capacity as counsel for a non-party. We
24 don't think it's relevant.

25 THE COURT: Well, I think you can because this is an

1 inquiry in which your client is interested. And I think it's
2 relevant to his position, or Renfroe's position vis-a-vis
3 Scruggs.

4 MR. ROGERS: We also make a best evidence objection,
5 Your Honor.

6 THE COURT: All right.

7 Well, she doesn't recall precisely what that written
8 agreement was, but she recalls there is one. To the extent
9 that agreement may be relevant to the inquiry that I have to
10 which I have to respond now or at the end of this hearing, I
11 think that if the document can be obtained by the time this
12 matter comes under submission, it ought to be produced by
13 somebody and I ought to have it so I'll know exactly what it
14 says so that I can ascertain from actually what it says, what
15 significance, if any, it has.

16 Does anybody have it?

17 MR. HAWLEY: Your Honor, I've not seen it. And let
18 me clarify what I said earlier, if I may.

19 THE COURT: All right.

20 MR. HAWLEY: Because I have not seen it, there may
21 be some descriptions within the agreement that we think
22 should not be produced or revealed. We have no objection to
23 the contingency fee part of it.

24 THE COURT: Well, Ms. Stanley may concede that and
25 not want that. She may just want in effect a redacted

1 version of it. But once we've got a best evidence rule
2 objection, which I sort of invited from Mr. Rogers and which
3 he's given me, and because there are two objects of the
4 inquiry, one, the defendants who Renfroe is alleging to be in
5 violation of a mandatory injunction, and one that Mr. Scruggs
6 who Renfroe is alleging is in violation.

7 And those are not necessarily the same thing, but they
8 begin to merge if and when I'm satisfied that they are the
9 same thing, that they are a joint venture, that they are
10 working together. And to determine that, I think Ms. Stanley
11 wants to show what the connection is. And therefore this is
12 relevant, so I'd like to see the agreement.

13 Now, there may be parts of it that are not relevant and
14 that can be redacted, but to redact something for the
15 purposes of the general public or to agree in advance that
16 I'm not going to be influenced by it, but I still have to see
17 it to say that.

18 Anytime the parties in advance can agree to redact
19 something so that the trier of the fact is never going to see
20 it, then that's one thing. But in this case I'm the trier of
21 the fact as well as the decider of the law, right now, at
22 least, and I don't know what that says. I don't know what
23 portions are relevant or how relevant and what portions might
24 be privileged, for instance, until I see it.

25 So my question is, do we have a copy of it? Or can we

1 obtain one? And I don't know whether the witness has one.

2 THE WITNESS: No.

3 THE COURT: She doesn't have one, she says.

4 I don't know who might have one, but I'd like to see it
5 because it may have some significance. It may not. But
6 until I see it, I can only rely on it to the extent it's a
7 correct representation of what's in writing her recollection
8 of it to the extent she recalls what's in it.

9 MR. HELD: Judge, we would like to request that Mr.
10 Scruggs have a copy delivered --

11 THE COURT: If he has a copy, I think it would be
12 appropriate to have him produce it not this minute because he
13 might not have anticipated this. But I think that before I
14 decide this, I'd like to see it and then let Mr. Hawley and
15 Mr. Rogers react to the appropriateness of it.

16 Now, Mr. Rogers may have opened the door by taking me up
17 on saying that that's the best evidence. But we'll take one
18 thing at a time. The first thing, I've got to see it. And
19 then I'll take your objections to it. But I can't rule on an
20 objection because I haven't seen what we're objecting to or
21 what we're talking about.

22 Mr. Rogers, get your client to produce that as quickly as
23 he can reasonably, and then you react to it as you produce it
24 and tell me what you see in it that is -- And you've got, I
25 think, a relevance objection, and all the objections you've

1 already made would not be waived by that.
 2 MR. ROGERS: Yes, sir.
 3 THE COURT: And Mr. Hawley should see it. And let
 4 him object and then let them tell me what they see in it
 5 that's worthy or is relevant, and then I'll decide to the
 6 extent to which I'm going to look at it and use it in
 7 whatever decision I make.
 8 MR. ROGERS: I will endeavor to do so, Your Honor.
 9 May I have help from the court? I have never seen the
 10 document myself. And to the extent that other objections are
 11 appropriate upon reviewing the document --
 12 THE COURT: The minute you see it, if you do see it,
 13 you can let me know --
 14 MR. ROGERS: Yes, sir.
 15 THE COURT: -- what your objections are to it.
 16 MR. ROGERS: Yes, sir.
 17 THE COURT: And share it then with Mr. Hawley, and
 18 then he can both share it with Ms. Stanley or Mr. Held, and I
 19 can get all of your reactions to it.
 20 MR. ROGERS: Thank you.
 21 MR. HAWLEY: So, Your Honor, all objections to that
 22 document are preserved for right now?
 23 THE COURT: For right now they are.
 24 MR. HAWLEY: Thank you, Your Honor.
 25 THE COURT: All we do know, and I think the witness

1 says there was such a document and it was a lawyer-client
 2 document of some sort. We know that much.
 3 MS. STANLEY: And for the purposes of today's
 4 hearing, just accept for the record the witness's testimony
 5 that an additional attorney-client relationship with Mr.
 6 Scruggs and someone else was developed in April of '06?
 7 THE COURT: I think that's the gist of her
 8 testimony.
 9 MS. STANLEY: Okay.
 10 BY MS. STANLEY:
 11 Q. So we have an attorney-client relationship here. We have
 12 an attorney-client relationship in April, and then you are
 13 hired as a consultant in July; correct?
 14 A. Correct.
 15 Q. Okay. And then this lawsuit was filed in September of
 16 '06. And for this particular lawsuit, you have assumed that
 17 Mr. Scruggs is in communication with Mr. Hawley on this suit,
 18 have you not?
 19 A. I would assume.
 20 Q. Okay. And it was Don Barrett who recommended that you
 21 hire Mr. Hawley, was it not?
 22 A. Yes.
 23 Q. And Mr. Barrett is a member of the Scruggs Katrina Group;
 24 correct?
 25 A. That's correct.

1 Q. And the Scruggs Katrina Group is paying your legal bills,
 2 paying Mr. Hawley's fees for his representation of you in
 3 this lawsuit; correct?
 4 A. I hope so.
 5 Q. Okay.
 6 And then there was one further lawsuit filed where Mr.
 7 Scruggs represented you, was there not, in January of this
 8 year, January the 26th?
 9 A. Refresh my memory, Barbara.
 10 Q. I'll be glad to.
 11 A. Was that when we were having the deposition?
 12 Q. Yes.
 13 A. Okay.
 14 MS. STANLEY: Your Honor, I would like to offer into
 15 evidence what is on the list as Exhibit 8.
 16 MR. ROGERS: May I see that?
 17 THE COURT: Plaintiff's Exhibit 8 for this hearing?
 18 MS. STANLEY: Plaintiff's Exhibit 8 for this
 19 hearing. It is --
 20 MR. HAWLEY: And, Your Honor, we have told Ms.
 21 Stanley that we object on behalf of the Rigsbys. We don't
 22 think it's really relevant to this court's inquiry into this.
 23 It was a pleading that was filed on a Friday, I think, or a
 24 Thursday, and was very quickly withdrawn the next week. I
 25 really don't think it has any bearing and may be somewhat

1 prejudicial to this hearing.
 2 MS. STANLEY: And, Your Honor, since we are trying
 3 to establish in this hearing the attorney-client relationship
 4 or the relationship in general between the Rigsby sisters and
 5 Mr. Scruggs, I think that Exhibit 8 is absolutely relevant
 6 because it was filed by Mr. Scruggs on behalf of the Rigsby
 7 sisters against Gene and Jana Renfroe in their individual
 8 capacity. And it was withdrawn shortly after it was filed.
 9 Nonetheless, it shows that in January of this year,
 10 January 26th, about six weeks ago, that Mr. Scruggs was
 11 actively involved as a lawyer representing the Rigsby
 12 sisters.
 13 THE COURT: Well, I haven't read it. I've just been
 14 handed a copy of it. I suppose that it's worthy of a -- I
 15 haven't studied the rules of evidence recently as well as
 16 Judge Hancock has. Judge Hancock can call those numbers out.
 17 Whether the relevance that I see is overwhelmed by the
 18 prejudicial effect is always a necessary inquiry, I think
 19 it's a more important inquiry though in a jury case than it
 20 is where a judge who is trained to discriminate between
 21 material that is prejudicial and offered for that purpose and
 22 relevant where there is an argument about the degree of
 23 relevance, the significance of it.
 24 Now, you all are in disagreement about the significance
 25 of it. I can look at it and hear you discuss it enough to

1 know that it has some relevance and some prejudicial effect.
 2 I can't say that I'm perfect and can distinguish without any
 3 question things that are prejudicial and things that are
 4 relevant and make that determination without letting myself
 5 be prejudiced in any way as I determine significance.

6 I was summoned to jury duty in the state court last week
 7 and begged off. Maybe I should have sat on a jury in state
 8 court last week so I could have had the experience in hearing
 9 these things and making evaluations, make sure that I was not
 10 prejudiced in any way.

11 I think there are one or two lawyers in the courtroom who
 12 will understand when I say I'm going to just invoke the Judge
 13 Barber rule. I think -- Two of them are laughing. And that
 14 in effect says trust me. Now, neither one of those lawyers
 15 always trusted Judge Barber, and the judge that's talking
 16 about it right now always didn't trust him. But you are
 17 going to be forced to because I'm going to take this and
 18 allow it into evidence and let you all argue it at the proper
 19 time what the significance of it is. I'm not going to make
 20 that determination now.

21 Now, it has a sufficient possibility of telling me
 22 something relevant to let it in, so I'll overrule your
 23 objection. But I'm not saying how important I think it is.
 24 I'm saying it gets past the threshold.

25 MR. HAWLEY: Thank you, Your Honor.

1 MS. STANLEY: May I approach, Your Honor?

2 THE COURT: Yes.

3 BY MS. STANLEY:

4 Q. Ms. Rigsby, let me show you a copy of Exhibit 8 and ask
 5 you if you have seen that document before?

6 A. Yes, I have.

7 Q. All right. And you and your sister authorized Mr.

8 Scruggs to file that complaint on your behalf, did you not?

9 A. Yes, we did.

10 Q. And on the last page of the document of Exhibit 8 on Page
 11 13, do you see that Richard F. Scruggs signed that document,
 12 submitting the complaint to the district court in
 13 Mississippi, the Southern District of Mississippi; correct?

14 A. I see that.

15 Q. So other than these four instances that I've noted so far
 16 that we've talked about, the February '06 representation, the
 17 April '06 representation, the participation by Mr. Scruggs in
 18 your defense of this lawsuit, and the suit that Mr. Scruggs
 19 filed on your behalf in January of '07, are there any other
 20 instances that Mr. Scruggs, any other litigation matters
 21 where Mr. Scruggs is representing you or your sister?

22 MR. HAWLEY: Your Honor, I'd like to object to the
 23 characterization of the phrase Mr. Scruggs participating in
 24 the defense. I think that connotes that he is counsel to the
 25 Rigsbys in this case, and I think the record is clear that he

1 is not. And there has been some communication in this
 2 record, and I just wanted to mention --

3 THE COURT: That may have been her implication. I
 4 didn't take it that way. If she's arguing that Mr. Scruggs
 5 is counsel in this case, I would say that that might get
 6 involved in a right lengthy inquiry that would involve a lot
 7 of considerations that I don't have and don't want before me
 8 right now. If that's your position, I'm not going to let you
 9 go into it. I'm not going to let you suggest or argue to me
 10 that Mr. Scruggs is in fact acting as her counsel in this
 11 case. He may be consulting with her. He may be
 12 participating in an indirect way. We've already had
 13 testimony that it was one of his Katrina group. Mr. Barrett,
 14 whose signature or name is also on your Exhibit 8 that's just
 15 been received, introduced the Rigsbys to Mr. Hawley's firm.
 16 But if you want me to find, and then find that very
 17 significant, that Mr. Scruggs is acting as her lawyer in this
 18 case, I'm not ready to go there yet.

19 MS. STANLEY: I understand, Your Honor.

20 THE COURT: I may never be ready to go there.

21 MS. STANLEY: I understand, Your Honor, but the
 22 consulting aspect of it is what we understood and further
 23 that Mr. Barrett is also involved.

24 BY MS. STANLEY:

25 Q. Were you aware, Ms. Rigsby, that Don Barrett called

1 shortly after this lawsuit was filed and on behalf of you and
 2 your sister attempted to settle the lawsuit?

3 A. You told me that during the deposition. I was not aware
 4 of it until you told me.

5 Q. All right.

6 And you were aware that during the depositions that Mr.
 7 Barrett also called and attempted to discuss and in fact did
 8 discuss settlement?

9 MR. HAWLEY: Your Honor, I object to settlement.

10 THE COURT: Sustained as to any discussion of
 11 settlement.

12 Now, I will pause if you want to go out in the hall and
 13 settle this, but just discontinue the discussion while you do
 14 that. I don't want to hear you tell me any settlement
 15 conversations.

16 MS. STANLEY: I appreciate that, Your Honor, but
 17 part of the settlement conversation is directly relevant to
 18 whether or not there has been compliance.

19 THE COURT: I think that's a problem because I saw
 20 it in your papers. Is Mr. Barrett a witness who has been
 21 subpoenaed or deposed?

22 MS. STANLEY: He has not been subpoenaed. He has
 23 not yet been deposed.

24 THE COURT: Because in your papers you say that he
 25 said. And you say he said it during settlement discussions.

1 Now, where you cut off inquiry into what can be said and
 2 what could be relevant in a settlement conversation,
 3 obviously it can't be used to suggest that one side is weak
 4 and one side is strong by virtue of any settlement
 5 conversation having been undertaken, or that particular offer
 6 has been extended and not accepted or counter offered.
 7 That's the kind of stuff that can't come in.

8 Now, in a so-called settlement conversation, somebody
 9 with authority or with knowledge of a fact that ultimately is
 10 relevant asserts, for instance, that it wasn't a .44 Magnum
 11 that was used. It was an AK-47. And the difference between
 12 those weapons is ultimately in issue. And that person knows,
 13 but it was said in a settlement conversation. I don't know.
 14 And I think that's kind of where we're sidling up to, as to
 15 whether that conversation that you refer to in here and is
 16 now being referred to is relevant beyond any relevance that
 17 the fact that there was settlement conversation. That fact
 18 can't influence me, can't come in.

19 What was said by somebody with knowledge of a matter that
 20 is relevant, if he had knowledge -- And I don't know whether
 21 he had any knowledge or not. He might have been blowing
 22 smoke. Lawyers have done that in my experience. And I've
 23 done it myself. So I don't know whether Mr. Barrett knew
 24 what he was saying when he said what you say he said.

25 MS. STANLEY: Your Honor --

1 THE COURT: Let Mr. Hawley get his lick in.

2 MR. HAWLEY: And, Your Honor, I want to restate an
 3 objection with respect to that reference to Barrett's
 4 telephone call on the same basis as settlement conversation
 5 which should not be part of this hearing.

6 I also would like to say for the court that I think it
 7 seriously mischaracterizes what was said in that call and the
 8 nature of the call. I heard the call, and that's not the way
 9 I remember it or understood it at the time.

10 THE COURT: Well, we may have two or three versions
 11 of it. And to the extent that what was said is relevant,
 12 then I guess I'm going to have to arbitrate and determine
 13 what was said and what the significance of it is, if there's
 14 a difference of opinion.

15 MS. STANLEY: Excuse me, if I may. There were two
 16 different phone calls. The first one --

17 THE COURT: No. The first one is that he was not
 18 in.

19 MR. STANLEY: Absolutely, he wasn't in.

20 THE COURT: That was Mr. Barrett's conversation or
 21 call to you or Mr. Held or somebody representing Renfroe.

22 MS. STANLEY: Precisely.

23 THE COURT: And it's now been objected to, and I
 24 guess that will have to be considered a motion to exclude
 25 because it came in without objection. And I'm going to

1 exclude it because the mere fact that there was a
 2 conversation regarding settlement, without knowing what was
 3 said as to the relevance of it, the only thing that would
 4 have any influence would be the fact that it was a settlement
 5 conference. And that's out.

6 Now we're getting to the second conversation which Mr.
 7 Hawley heard because it took place during a deposition. And
 8 she thinks and asserts in her papers here that Mr. Barrett
 9 said something which is relevant to the inquiry today. And
 10 now we've got to decide whether his hearsay statement can
 11 come in.

12 MS. STANLEY: Your Honor, it's offered as an
 13 admission of plaintiff/deponent because Exhibit 11 that is in
 14 the documents before you is a letter from Mr. Hawley to Mr.
 15 Held, and the first sentence of the second paragraph of that
 16 letter says, "Last Thursday Mr. Don Barrett made an offer to
 17 Steve Green and Barbara Stanley to return certain documents
 18 as part of a settlement proposal."

19 THE COURT: And this is 11 that is already in?

20 MS. STANLEY: It is being offered. It was
 21 unopposed --

22 THE COURT: Well, it's got a number here on it, and
 23 I don't think it has been received. It also refers to the
 24 settlement. But I think that the fact, if it is a fact, that
 25 there's been settlement talk is not going to influence me.

1 And I'm not going to let you talk about that fact. I've
 2 heard it. It's been referred to. And I've already sort of
 3 with a twinkle in my eye, I hope, said I wish it had come to
 4 fruition. But it didn't and hasn't. The fact that there has
 5 been some talk about settlement is not relevant and can't
 6 come in. But what was said to the extent it's relevant here
 7 can come in if it's relevant and if it meets hearsay
 8 qualifications.

9 And now I've got 11, which purports to be on the
 10 letterhead of the law firm that now represents in this case
 11 this defendant, this witness. And Mr. Hawley says there, and
 12 I'm reading it -- It doesn't mention a number of documents or
 13 how many or what they are. It says certain documents
 14 supplied to me by The Scruggs Law Firm.

15 Now, I don't know what exactly the relevance of that is.
 16 But is there an objection to 11?

17 MR. HAWLEY: Your Honor, I do not object to 11. My
 18 objection was with respect to the Barrett conversation --

19 THE COURT: Well, I've agreed that the --

20 MR. HAWLEY: -- as hearsay.

21 THE COURT: -- Barrett conversation respecting any
 22 descriptive material about what the documents contain from
 23 Mr. Barrett would involve Mr. Barrett's authority to say that
 24 as well as other things that possibly might be objected to.
 25 But the letter, what the significance of it is other than

1 that, I'm not sure, but no objection having been made to it,
2 I'll receive it.

3 MS. STANLEY: Your Honor, the letter is offered for
4 two purposes. The first purpose is to show that Mr. Barrett,
5 a participant in the Scruggs Katrina Group, is participating
6 to a degree in the defense of the Rigsby sisters in this
7 litigation insofar as he was involved in a settlement
8 discussion.

9 The second point is regarding the compliance with the
10 injunction. And this letter is dated January the 31st. The
11 conversation took place on January the 16th, which is, you
12 know, a full month or six weeks after the injunction had
13 issued. And there is still a discussion of whether or not
14 the Scruggs Katrina Group is providing documents that were
15 addressed in the injunction. So that's the twofold purpose
16 for offering Exhibit 11.

17 MR. HAWLEY: And, Your Honor, I object based on
18 hearsay and based on the settlement aspect of it because I
19 think that really mischaracterizes what Mr. Barrett said and
20 the circumstances which generated that phone call, which
21 actually related to a State Farm lawsuit.

22 And you've already heard our Rule 19 motion and you've
23 overruled it. But for the same reasons that State Farm
24 really should be in this lawsuit, that's where Mr. Barrett
25 had his knowledge, was from other lawsuits that he thought

1 were being settled in a global settlement involving State
2 Farm, and some of those other lawsuits like if they were
3 settled, provided those documents.

4 And guess who one of the parties was to that proposed
5 settlement? The attorney general for the state of
6 Mississippi. So I don't think Mr. Barrett was speaking on
7 behalf of the Rigsbys.

8 THE COURT: Then when the word "settlement" was used
9 in reference by Mr. Barrett, he might not be talking
10 exclusively about settling this lawsuit.

11 MR. HAWLEY: That's exactly right, Your Honor. That
12 exactly is not typical of the rationale for a hearsay
13 objection and an objection based on settlement.

14 THE COURT: Well, it leaves it enigmatic and
15 difficult to sort out as to what exactly he might have meant.
16 If, however -- and this is hypothetical, and I don't want to
17 get too hypothetical here -- Mr. Barrett in any conversation
18 with anybody while having some relationship of authority with
19 the defendants here or with, for that matter, Mr. Scruggs and
20 his law firm said, we -- let's say the Katrina group -- have
21 documents that have not been produced. If he said that, then
22 that would be an admission against interest that might be the
23 positions taken by the defendants here and by Mr. Scruggs.

24 I haven't heard that yet or anything quite approaching
25 that. We would have to take something like that, if we heard

1 it, and decide whether it was admissible, but we haven't
2 heard it yet.

3 MR. HAWLEY: Your Honor, may I make one more point
4 just for the record?

5 THE COURT: All right.

6 MR. HAWLEY: The Rigsbys were deposed on
7 January 25th and January 26th. That conversation that this
8 court should not really hear about from Mr. Barrett took
9 place on either the 25th -- I think it was the 25th, Thursday
10 night, not the 16th, as I think Ms. Stanley said in some of
11 her argument.

12 THE COURT: I don't know what the difference in the
13 time would make to us, but I hear what you say, and she can
14 agree or not agree with you as to her recollection.

15 MS. STANLEY: The extent that I said the 16th, I was
16 mistaken. I was intending for it to be the 26th.

17 THE COURT: Which was during the deposition dates?

18 MS. STANLEY: Correct.

19 THE COURT: Well, for the purposes of tending to
20 prove having any probative value on the relationship of Mr.
21 Barrett to the defendants here, I think the fact that he, if
22 it is a fact, purported to speak on their behalf talking
23 settlement may be relevant to that connection or
24 relationship. And from what you say, that conversation might
25 or might not be in relation to some sort of global settlement

1 which involved the attorney general of Mississippi and the
2 United States and the International Court of Justice and
3 maybe a few other people beyond Mississippi.

4 But I'm interested not in all of that. I'm interested in
5 this case right here, which is in the Northern District of
6 Alabama. So if Mr. Barrett called and wanted to engage you
7 in conversation with you representing Renfroe because
8 Renfroe, he thought, was necessary to bring into the
9 conversation about the global settlement or some kind in
10 Mississippi or the United States or wherever, then that
11 doesn't necessarily prove or tend to prove that he is
12 representing the Rigsbys. Doesn't necessarily prove that.
13 He has other fish to fry. And these fish happen to be in the
14 same frying pan. So that could be. I don't know.

15 I tell you what I'm going to do. I'm going to take a
16 lunch recess and be back here at 1 o'clock with you folks and
17 let you have a little lunch break, and I'm going to take one.

18 Yes, ma'am?

19 MS. STANLEY: Your Honor, may I say one more thing?

20 THE COURT: Sure.

21 MS. STANLEY: The Renfroes are not now and have not
22 ever been a part of any kind of global settlement involving
23 State Farm and the Mississippi attorney general and the World
24 Court and all the rest of us.

25 THE COURT: So you are representing to me that at

1 least as far as your representation of the Renfroes, you are
 2 unaware of any approach to Renfroe about its settlement, its
 3 participation in anything involving any settlement of any
 4 State Farm problems, criminal or civil?

5 MS. STANLEY: That is correct, Your Honor.

6 THE COURT: Well, the recess is still on. We'll see
 7 you at 1 o'clock.

8 (Lunch recess from 11:45 a.m. to 1:06 p.m.)

9 AFTERNOON SESSION

10 THE COURT: Keep your seats.

11 All right. If you can remember where you were, you may
 12 proceed.

13 MS. STANLEY: Thank you, Your Honor.

14 CORI RIGSBY

15 DIRECT EXAMINATION (resumed)

16 BY MS. STANLEY:

17 Q. Ms. Rigsby, let me ask you about your employment as a
 18 consultant with the Scruggs Katrina Group. As I understand
 19 it, there is no written agreement, no written employment
 20 agreement; correct?

21 A. Correct.

22 Q. But by verbal agreement, you and your sister are each
 23 being paid \$150,000 a year for your services as a consultant?

24 A. Correct.

25 Q. And you don't have any set hours and you are unable to

1 estimate the number of hours a week or month that you put in
 2 that you're consulting?

3 A. It varies.

4 Q. Let me ask you now, and turn to another topic, and ask
 5 you about your efforts to get the documents back and to get
 6 them turned over to Renfroe.

7 A. Okay.

8 Q. As I understand it, you made one phone call to Mr.
 9 Scruggs and requested that he return the documents; correct?

10 A. Correct.

11 Q. And you made that sometime in mid-December?

12 A. It was close to December 12th. Yes, ma'am.

13 Q. All right. And as you understand it, Kerri Rigsby, your
 14 sister, didn't make any phone call herself to Mr. Scruggs?

15 A. Yes. I told her I'd make the phone call.

16 Q. Okay. Now, you understand that -- Do you know whether or
 17 not your lawyers, Mr. Hawley and Ms. Brown, do you know
 18 whether or not they made any phone calls to Mr. Scruggs
 19 asking for the documents?

20 A. I don't know. I'm sure, I mean they made a lot of phone
 21 calls about the documents, but you'd have to ask them.

22 Q. But you don't know whether or not they made any phone
 23 calls to Mr. Scruggs or any members of the Scruggs Katrina
 24 Group asking for the return of the documents?

25 A. No. I would assume they did, but I don't know.

1 Q. Okay. You didn't send Mr. Scruggs any kind of letter or
 2 fax or e-mail requesting that he return the documents, did
 3 you?

4 A. I did not. They were no longer in his possession when I
 5 made the phone call, so there was no need to follow up.

6 THE COURT: Well, let me ask about that phone call.

7 You may be planning to cover this.

8 But when you asked him to return them, did you already
 9 know that he had given them to the attorney general or not?

10 THE WITNESS: I did not know when I made the phone
 11 call. He informed me.

12 THE COURT: He informed you in that phone call? And
 13 this is the first phone call you made to him or anybody else
 14 seeking a return of the documents?

15 THE WITNESS: Yes, sir.

16 THE COURT: And in that phone call is when you
 17 learned from him that he had given them to the attorney
 18 general of Mississippi?

19 THE WITNESS: Yes, sir.

20 BY MS. STANLEY:

21 Q. And in that phone call did you ask him if he had returned
 22 all copies of the documents to the attorney general?

23 A. He actually stated in the phone call before I could ask
 24 him that he had returned all copies of everything in his
 25 office, the Moss Point office, to the attorney general.

1 Q. So you understood that it was all copies from the Moss
 2 Point office?

3 A. That's my understanding.

4 Q. And you are aware that Mr. Scruggs has more than one
 5 office for his law firm; correct?

6 A. I'm aware of that, yes.

7 Q. So did you ask him about whether or not he returned the
 8 documents that he might have had in the Oxford office?

9 A. I did not.

10 Q. Did you ask him about whether he returned the documents
 11 from any other satellite office that his law firm may have?

12 A. He stated that he had returned all the documents. And
 13 when I mentioned Moss Point, that's where the data dump
 14 documents were held. I could see them in that office when
 15 I'd go in to work. So I knew that that was the only office
 16 that had those from that one, I can't remember what you
 17 called it.

18 Q. The third batch?

19 A. Batch. Okay. Thanks.

20 The third batch of documents were retained in the Moss
 21 Point office. So when we were talking about the documents,
 22 that's what stuck out to me, that he said he had returned all
 23 copies that he was aware of.

24 Q. Okay. Now, what about the documents in the hands of
 25 other law firms that are participants in the Scruggs Katrina

1 Group, did you ask him whether or not he had returned those?
 2 **A.** No, I did not.
 3 **Q.** Did you ask him about the number of copies of documents
 4 that he had made, either electronic or paper copies, and
 5 whether or not they were included in the documents that he
 6 had turned over to the attorney general?
 7 **A.** I didn't ask him. He mentioned when he said copies, he
 8 said something about electronic copies on that phone call. I
 9 don't remember exactly how he worded it.
 10 **Q.** Did you ask him whether or not he had given copies of
 11 these documents to any lawyers outside of the Scruggs Katrina
 12 Group?
 13 **A.** No, I did not.
 14 **Q.** So you don't know whether or not he either gave copies to
 15 someone else or got copies back from them?
 16 THE COURT: Well, there is a difference between
 17 outside the Katrina group and outside the Scruggs firm. You
 18 haven't asked her if he said that he had given to the
 19 attorney general all copies from any and all lawyers within
 20 the Katrina group. You haven't asked her that yet.
 21 BY MS. STANLEY:
 22 **Q.** Ms. Rigsby, did you ask him whether or not he gave you
 23 all copies from anyone in either his law firm or the Scruggs
 24 Katrina Group?
 25 **A.** I did not.

1 **Q.** Did you check with your lawyer, with Mr. Hawley, to
 2 determine whether or not you had any additional legal rights
 3 to enforce your request that all documents whether or not
 4 they were in Mr. Scruggs' hand at the time be turned over?
 5 MR. HAWLEY: Your Honor, I object based on the
 6 attorney-client privilege.
 7 THE COURT: Sustained.
 8 MR. HAWLEY: Thank you.
 9 BY MS. STANLEY:
 10 **Q.** Did you ask Mr. Scruggs for any kind of list or
 11 accounting of the number of copies of documents that he made
 12 and to whom he had given them?
 13 **A.** No.
 14 **Q.** You mentioned earlier that when you talked to Mr.
 15 Scruggs, he had said that he had given the documents to the
 16 Mississippi attorney general. Do you recall that just a
 17 minute ago?
 18 Yes?
 19 **A.** Yes.
 20 **Q.** I would like you to look at what has been marked as
 21 Exhibit 9. And I believe Exhibit 9 is the December 12 --
 22 **A.** Is it in this pack?
 23 **Q.** Yes.
 24 -- December 12, 2006, letter to Mr. Scruggs from Courtney
 25 Schloemer, special assistant to the attorney general.

1 **A.** Okay.
 2 MS. STANLEY: And I'd like to offer this exhibit for
 3 admission.
 4 THE COURT: It's received.
 5 MS. STANLEY: Thank you.
 6 BY MS. STANLEY:
 7 **Q.** Ms. Rigsby, when did you first see Exhibit 9, this letter
 8 from Ms. Schloemer?
 9 **A.** I don't remember.
 10 **Q.** Okay. But this is the letter that said that she was not
 11 comfortable with the protective measures put in place by the
 12 court for keeping the documents out of the grasp of State
 13 Farm. And she then, she says, "I would appreciate [it] if
 14 you would provide us with your copy of the documents from
 15 Cori and Kerri, and we can return them to you at a time when
 16 our investigation is not in jeopardy by the possibility of
 17 disclosure of those documents to the wrong party." Do you
 18 see that in her letter?
 19 **A.** I do.
 20 **Q.** Okay.
 21 Now, did you ever ask Mr. Scruggs whether or not he had
 22 asked the attorney general to return the documents to him as
 23 she invited him to do in her letter?
 24 **A.** No, I did not. We asked the attorney general to return
 25 the documents.

1 **Q.** Okay.
 2 THE COURT: We meaning who, you and your sister?
 3 THE WITNESS: Kerri and I both talked with her, and
 4 Greg Hawley sent a letter on our behalf requesting them from
 5 the attorney general's office.
 6 THE COURT: So when you say you asked her, you are
 7 talking about Courtney Schloemer?
 8 THE WITNESS: Yes, sir.
 9 BY MS. STANLEY:
 10 **Q.** And eventually --
 11 THE COURT: And when did you do that? This was by
 12 telephone?
 13 THE WITNESS: Yes, sir, it was.
 14 THE COURT: And in writing?
 15 THE WITNESS: Yes, sir. I don't remember the exact
 16 dates. I'm sorry.
 17 THE COURT: And you and your sister -- Was that just
 18 you that called Ms. Schloemer, or did you and your sister
 19 together call her?
 20 THE WITNESS: My recollection is that Kerri and I
 21 called at different times. We made two different requests.
 22 THE COURT: And you don't remember the exact date?
 23 THE WITNESS: No, sir. I'm sorry, I don't.
 24 THE COURT: Was it before or after December 12, did
 25 you remember at least one side or the other of that date?

1 THE WITNESS: It was after.
 2 THE COURT: It was after December the 12th?
 3 THE WITNESS: Yes, sir.
 4 THE COURT: And you don't remember how long after
 5 December the 12th?
 6 THE WITNESS: I do know one request was made after
 7 the grand jury testimony that we gave in Mississippi. And
 8 that was the second time we requested them.
 9 THE COURT: Well, can you give me the date of your
 10 grand jury testimony then? That would help us know when you
 11 asked for the documents.
 12 THE WITNESS: It was on a Wednesday, so I think it
 13 was the 17th of January.
 14 THE COURT: The 17th of January?
 15 THE WITNESS: Yes, sir. That was our second
 16 request.
 17 THE COURT: So it was after that that you asked her
 18 for the documents back?
 19 THE WITNESS: For the second time.
 20 THE COURT: For the second time. You had asked for
 21 them before?
 22 THE WITNESS: Yes, sir.
 23 THE COURT: In her response to your request, did she
 24 say basically the same thing she said in this letter to Mr.
 25 Scruggs or something different?

1 THE WITNESS: I'm getting confused between the two
 2 conversations.
 3 THE COURT: She didn't give them to you?
 4 THE WITNESS: No, sir, she did not give them to us.
 5 THE COURT: Did she give you a reason why she didn't
 6 give them to you?
 7 THE WITNESS: I believe one time that we talked to
 8 her she said that she would have to discuss that with the
 9 other people in her office. She didn't say no, but she
 10 didn't say yes. And I don't remember the reason on the
 11 previous conversation before the January 17th --
 12 THE COURT: Well, if she said that she didn't know
 13 whether she was going to give them to you or not because she
 14 had to talk to somebody, did she follow up by telling you
 15 eventually that she had, with the help of others, made the
 16 decision not to give them to you, or did you just not hear
 17 from her until January?
 18 THE WITNESS: I'm sorry. I don't understand her
 19 asking me. The first time I talked to her or the second
 20 time?
 21 THE COURT: The first time she talked to you, did
 22 she say she had to talk to somebody?
 23 THE WITNESS: That was the second time. I don't
 24 really remember the first conversation. I'm sorry. The
 25 second time, which was the January 17th conversation, that's

1 when she responded that she would have to talk to the people
 2 in her office and get back with us.
 3 THE COURT: Well, did she get back to you?
 4 THE WITNESS: I believe she got back with my
 5 attorney. She didn't get back with me personally.
 6 THE COURT: I may have gotten ahead of you, but go
 7 ahead.
 8 MS. STANLEY: Okay.
 9 BY MS. STANLEY:
 10 Q. Well, actually I'll pick up there. And in fact
 11 eventually the Mississippi attorney general did send boxes of
 12 documents to your attorney; correct?
 13 A. That's my understanding, yes.
 14 Q. Okay. If you would look at Exhibit 13 in the stack
 15 before you, which I offer at this time.
 16 THE COURT: 13, hand it to me.
 17 THE COURTROOM DEPUTY: (Complying.)
 18 BY MS. STANLEY:
 19 Q. Exhibit 13 is a Friday, February 2nd, 2007, letter from
 20 Katherine Brown to Jack Held and Rushton McClees. And in
 21 that letter they talk about getting the documents back from
 22 the attorney general; correct?
 23 A. Just a second.
 24 Q. Sure.
 25 A. (Witness reading.)

1 THE COURT: If you are offering 13, it's received.
 2 MS. STANLEY: Thank you.
 3 A. Okay.
 4 BY MS. STANLEY:
 5 Q. Okay. And in the second paragraph of that letter it says
 6 that -- your lawyer says that they are sending them on to Mr.
 7 Held and Mr. McClees. They are packaged the same way in
 8 which their office received them or which they received them
 9 from The Scruggs Law Firm. Let me read that sentence because
 10 it came out scrambled when I just said it.
 11 The first sentence, the second paragraph, "Based on our
 12 conversations with the Mississippi Attorney General's office,
 13 it is our understanding that the documents that you are
 14 receiving today are packaged in the same way in which their
 15 office received them from The Scruggs Law Firm back in
 16 December...."
 17 Do you see that?
 18 A. I do.
 19 Q. And was that your understanding, that your lawyer was
 20 passing them on, was receiving them in the same packaging
 21 that they had been received from the attorney general on to
 22 the Sirote law firm that --
 23 A. I didn't have any kind of understanding of the packaging.
 24 Q. Okay. If you would look --
 25 THE COURT: Wait a minute, now. This sentence talks

1 about receiving them by the attorney general's office from
 2 The Scruggs Law Firm and refers to the same packaging. So
 3 there's the theoretical possibility that you are talking
 4 about two dates of receipt, one by the Mississippi attorney
 5 general's office, which is what this refers to, and the other
 6 one is receipt by Mr. Hawley's law firm, which is another
 7 date. And I think what this implies is, is that they are all
 8 in the same condition. But I'm not sure I understand that
 9 this is supposed to prove or satisfy me to the extent it's
 10 designed to do that or that it's important, that the
 11 Mississippi attorney general has not opened or changed the
 12 receptacle, the depository of the document, because this says
 13 in accordance with the Mississippi attorney general's office,
 14 they were in the same boxes and the same condition they were
 15 in when Mr. Scruggs delivered them to the attorney general's
 16 office. That's what this says. I don't know whether that's
 17 important or not or whether this proves it or not, but that's
 18 what that says.

19 MS. STANLEY: I understand. And all we know, Your
 20 Honor, is what's in the letter.

21 THE COURT: All right.

22 BY MS. STANLEY:

23 Q. And the second page of Exhibit 13 is a photograph of two
 24 boxes; correct?

25 A. Yes.

1 Q. A little hard to determine from the photograph. But I
 2 will represent to you that the photograph is of these two
 3 boxes here.

4 A. All right.

5 Q. Did you ever see those boxes when they were at your
 6 attorney's office?

7 A. I don't recognize those boxes.

8 Q. Did you ever see those boxes when they were at Mr.
 9 Scruggs' office before he sent them to the attorney general?

10 A. I have no recollection of seeing those boxes.

11 Q. Okay.

12 And so if these --

13 THE COURT: It could be that a box is a box is a
 14 box. There may be special markings on the box. I think I'm
 15 clever enough to take a box and I could make a mark on it,
 16 which you might or might not detect, and make sure that I
 17 could trace that box through several hands.

18 But the mere fact that it's a cardboard box of a certain
 19 size doesn't mean that it's the same one as documents are
 20 passed from person to person in a box of that size and of
 21 that construction.

22 For what that's worth, I'll tell you, I'm puzzled by the
 23 possibility of it even though it may be a non-question.

24 I think she was saying she hadn't seen those boxes
 25 before.

1 MS. STANLEY: I agree, Your Honor. That's what I
 2 understood her to say.

3 THE COURT: Yeah. I think that's what she said, she
 4 hadn't seen those boxes before. I don't know how carefully
 5 she examined any box.

6 BY MS. STANLEY:

7 Q. Have you seen any boxes of documents that purport to come
 8 from Mr. Scruggs to the attorney general to your lawyer, Mr.
 9 Hawley?

10 A. No, ma'am.

11 Q. So all we know then is what we've been told in the
 12 transmittal letter then from Ms. Brown? You don't have any
 13 other evidence to offer regarding the boxes and their
 14 contents that were shipped from Mr. Scruggs to the
 15 Mississippi attorney general and then to Mr. Hawley?

16 A. No, I don't have anything else to offer.

17 THE COURT: Let me interrupt. The courtroom deputy
 18 reminds me that she never heard me use the word "received"
 19 with respect to Exhibit 8 after overruling the objection.

20 And since I overruled the objection, I'll receive it. I
 21 thought that that was either implicit or express, but now
 22 it's express. It's in.

23 MS. STANLEY: All right.

24 BY MS. STANLEY:

25 Q. So the next thing that we heard was a letter that is in

1 there as Exhibit 12. These are slightly out of chronological
 2 order, but it makes more sense subject matter wise, this
 3 letter, Exhibit No. 12, which I offer for admission at this
 4 time.

5 THE COURT: Without objection, it's received.

6 BY MS. STANLEY:

7 Q. Exhibit 12 is a February 1st, 2007, letter addressed to
 8 Jack Held from Bruce Rogers, attorney for Mr. Scruggs. Do
 9 you see that?

10 A. I do.

11 Q. And Mr. Rogers in the second paragraph of the letter
 12 talks about enclosing documents, four separately
 13 rubber-banded groups, that were referenced in Greg Hawley's
 14 letter of yesterday that I'm not sure -- that I believe are
 15 referencing Exhibit 11.

16 At any rate, Mr. Rogers talks about four separately
 17 rubber-banded groups that are documents that were recently
 18 returned to our client -- now, his client is Mr. Scruggs --
 19 from a lawyer that is not a part of the Scruggs Katrina
 20 Group. Do you see that?

21 A. I do.

22 Q. Were you aware of the return of documents from a lawyer
 23 who is not a member of the Scruggs Katrina Group?

24 A. Was I aware of it when?

25 Q. In February when these were being returned.

1 A. No, I was not.
 2 Q. Okay.
 3 And you had earlier said that you weren't aware of
 4 whether or not Mr. Scruggs had given documents to anyone who
 5 was not a member of the Scruggs Katrina Group?
 6 A. That's correct.
 7 Q. Does this refresh your recollection any that you might
 8 have known of documents that were given to lawyers who were
 9 not a member of the Scruggs Katrina Group?
 10 A. Say that again.
 11 Q. Does seeing this letter from Mr. Scruggs' lawyer refresh
 12 your recollection that Mr. Scruggs may have provided copies
 13 of the documents to lawyers who were not members of the
 14 Scruggs Katrina Group?
 15 A. I don't know that that's -- I recently found out that
 16 another lawyer had a copy.
 17 Q. And who was that?
 18 A. I don't know if I'm supposed --
 19 MR. HAWLEY: Your Honor.
 20 MR. ROGERS: Your Honor.
 21 THE COURT: Forget who the lawyer was or what the
 22 relationship was for a minute. Are you saying a copy or
 23 copies of all the things that Mr. Scruggs had that another
 24 lawyer, that you understood another lawyer, whoever it might
 25 be, outside the Katrina group, had copies of all the

1 documents? Is that what you understood somewhere along the
 2 line?
 3 THE WITNESS: I don't know if it was all the
 4 documents. It came to my attention just recently that
 5 another attorney had a copy of some of the documents. And
 6 it's also my understanding that those documents have been
 7 returned as well.
 8 THE COURT: Let me interrupt to ask a question of
 9 counsel. Have you compared the documents that were delivered
 10 to Mr. Held with the letter of February 1 to the 8,000
 11 documents that were delivered earlier by Mr. Hawley to
 12 determine whether all of the documents within the number
 13 delivered by Mr. Rogers' firm to you were within the 8,000
 14 delivered by Mr. Hawley's firm?
 15 MS. STANLEY: We have undertaken no comparison, Your
 16 Honor. We have not made any attempt. We had understood from
 17 her testimony and -- from Ms. Rigsby's testimony and from the
 18 multiple reports in the newspapers and on the 20/20 show that
 19 there was a universe of 15,000 documents that were taken in
 20 the data dump.
 21 THE COURT: Well --
 22 MS. STANLEY: So our concern was if we only had half
 23 of them, how could we tell --
 24 THE COURT: -- I understand how your mind worked on
 25 that, and I'm not faulting you for reaching that conclusion.

1 But that may or may not be persuasive on me at the present
 2 stage of what I hear now. And the narrow focus today is on
 3 whether the documents were delivered.
 4 Now, the letter here from Mr. Rogers to Mr. Held says
 5 most of the enclosed documents were referenced in Greg
 6 Hawley's letter yesterday, which arguably suggests that Mr.
 7 Hawley's letter referring to, as it turned out, are
 8 approximately 8,000 documents, may not include all the
 9 documents that are here, which would suggest there is some
 10 slack somewhere. I mean, I'm just making your argument for
 11 you.
 12 MS. STANLEY: Let me see if I can clarify this just
 13 a minute. And I agree with what you are saying.
 14 BY MS. STANLEY:
 15 Q. These are the documents, the boxes of documents, that
 16 were provided to us from Mr. Hawley's firm that are the
 17 documents allegedly that Mr. Scruggs gave to the attorney
 18 general and the attorney general sent on to Mr. Hawley. So
 19 then there is another Redweld --
 20 MR. ROGERS: May I interrupt, Your Honor, and
 21 interpose an objection to this exercise?
 22 THE COURT: You may.
 23 MR. ROGERS: Your Honor entered an order that said
 24 if counsel for Renfroe or Renfroe intended to refer to
 25 documents or use documents in connection with this contempt

1 hearing, they should first be submitted to an in camera
 2 inspection by Your Honor by March the 2nd and allow us an
 3 opportunity to have the ability to see whether they are the
 4 same documents.
 5 I tried to be quiet, but we are now sort of moving beyond
 6 just a casual reference. Now we are hearing Ms. Stanley
 7 offer a very real reference in an attempt to show support for
 8 their claim of contempt. And we would object, Your Honor, on
 9 the grounds that we have not been afforded an opportunity to
 10 look at all these documents, Your Honor has not been afforded
 11 an opportunity to look at these documents or the containers
 12 they were delivered in, and we think it's a violation of your
 13 order.
 14 MS. STANLEY: May I respond, Judge?
 15 MR. HAWLEY: We would join in that, Your Honor.
 16 THE COURT: Wait a minute. Let --
 17 MR. HAWLEY: I join in that, Your Honor.
 18 THE COURT: You join that.
 19 All right. Respond to that, if you care to.
 20 MS. STANLEY: My response is twofold: First of all,
 21 we had understood that the hearing this morning was on the
 22 defendants' ability and Mr. Scruggs' ability to show cause
 23 why they should not be held in contempt. And that being our
 24 understanding, the issue had nothing to do with the number of
 25 documents or the contents of the documents.

1 THE COURT: Well, that gets back to the election I
2 gave you all the chance to opt out of that inquiry as to what
3 we were here for today and to postpone it. But you didn't do
4 that.

5 MS. STANLEY: It still would have failed --

6 THE COURT: Instead, you proceeded with a civil
7 contempt knowing, or I think you should have known or
8 understood, that the possibility of this objection was going
9 to come up. I saw it. I've already done too much of free
10 legal advice to both of you. I don't want to keep it up.
11 But I think the objection has some merit to it.

12 MS. STANLEY: I had one other point, Your Honor.

13 THE COURT: Go ahead.

14 MS. STANLEY: And the second point was that had
15 there been any question about the contents of the documents
16 and any kind of comparison of documents, then that had been
17 my understanding, that if we were going to discuss whether
18 this document --

19 THE COURT: I can see that. And that's why I'm
20 going to overrule the objection, because I think there's some
21 confusion possibility in what I did. And you, I think, have
22 some legitimacy to your understanding of what the inquiry was
23 going to be.

24 I don't see, and didn't see when I set this hearing, any
25 reason for comparing documents to see if they were the same

1 as somebody else's until I saw Mr. Rogers' letter which, of
2 course, you've had because you've offered it. And I don't
3 have any way of knowing what the ultimate significance of the
4 letter and what the language in it might imply in the way of
5 a difference which arguably, if there is a difference, could
6 mean that there were some documents that weren't delivered in
7 the 8,000 that were in Mr. Scruggs' possession. That's what
8 it could argue and that's what you could argue just on the
9 basis of the letter, which has now come in without any
10 opposition.

11 What he's objecting to is you're asking me ultimately to
12 make that comparison, which you haven't done, which I asked
13 you if you had done it, and you haven't done it, because you
14 didn't anticipate this.

15 Now, what's going to end up if I sustain his objection is
16 it may well be that the only evidentiary basis that I have
17 upon which I could agree with you that there are some that
18 weren't in the 8,000 Mr. Rogers left, which is in without
19 objection.

20 Mr. Rogers may want to compare it, and he may say to me
21 like he's saying now, I wish I had had that opportunity to
22 see what, as Judge Acker said, I had the right to see by
23 March 1st, or whatever it was, the documents if they were
24 going to be offered. But you are saying you are not going to
25 offer the documents. You are still not offering the

1 documents. So you haven't violated that that yet or
2 undertaken to do it.

3 We're just talking about numbers and comparisons. What
4 it all means, I don't know. But if you are going to offer
5 all the documents of both varieties, the ones that were
6 received -- And I don't know whether my order that he's
7 referring to is limited to the documents that were delivered
8 by Mr. Hawley's firm or not. It may be limited just for that
9 and not be limited to the documents that Mr. Rogers
10 delivered. I haven't looked at the order right recently.

11 But you haven't offered either one of them. You offered
12 the letter. It's in for what it's worth. And what it's
13 worth may be a matter of debate.

14 Right as of now, if there's an objection to the offer of
15 the documents themselves under the circumstances, I'm going
16 to sustain it. I don't know that it helps or hurts anybody.
17 I don't know if it gores somebody's ox, whose ox is being
18 gored. But I'm sustaining the objection made by both Mr.
19 Scruggs and the Rigsbys. Sustained, if you were offering
20 those.

21 They are not numbered as exhibits over there, so as far
22 as I know, you haven't offered them. But I'm going to
23 assume you'd offer them and assume that there's an objection
24 made, and I'm going to sustain it.

25 All right. What's your next question?

1 MS. STANLEY: The documents were not offered. The
2 only reason that they are here is because we had offered and
3 had in evidence pictures of the containers, and it was just a
4 concern as to whether or not --

5 THE COURT: Well, I'll judicially notice to the
6 extent my eyes are capable of it that those boxes that you've
7 got back there look like, very much like, probably are, the
8 boxes that are pictured in the attachment to Mr. Rogers'
9 letter.

10 MS. STANLEY: And then the other container that we
11 wanted to show, which was offered as a photograph as Page 2
12 of Exhibit 12 is this Redweld that contains the documents
13 that were returned from a lawyer that is not part of the
14 Scruggs Katrina Group. And it is a combination of these two
15 boxes and this Redweld that total 8,000 documents.

16 Additionally, we've gotten three other batches of
17 documents. We got another batch of documents on April the
18 6th as reflected by a letter, Exhibit 14 -- I mean, excuse
19 me -- February the 6th. I'm sorry. We are not to April yet.

20 THE COURT: What's the number of that one?

21 MS. STANLEY: Exhibit 14.

22 (Pause.)

23 THE COURT: I take it that whether this witness has
24 seen this letter or not, this is the computer disk for which
25 she was asked questions about and which she answered about?

1 MS. STANLEY: Yes, Your Honor.

2 THE COURT: At any rate, 14 is offered and received.

3 MS. STANLEY: All right.

4 And 14, on February the 6th, again Mr. Rogers sends a
5 letter, a transmittal letter, to Mr. Held in which he
6 encloses five computer disks on which the documents were
7 stored. These disks were given to our client from a lawyer
8 that is not a part of the Scruggs Katrina Group and are being
9 delivered to you in an attempt to avoid further controversy.

10 So these are offered to demonstrate that there are
11 additional copies of the documents in electronic form that at
12 one point had been in the hands of a lawyer that is not a
13 part of the Scruggs Katrina Group.

14 THE COURT: Well, I've never looked at any one of
15 the 8,000 no matter from what source they came, and I don't
16 need to look at them as of now and don't intend to look at
17 them as of now. But for the purpose that you offer them,
18 they are received for that limited purpose. And I will not
19 access them unless I tell you in advance I'm planning to and
20 give you a chance to object.

21 MS. STANLEY: On February the 28th we got another
22 batch of documents. And I don't have this cover letter to
23 offer as an exhibit. But on February the 28th Mr. Rogers
24 delivered another set of documents to Mr. Held, again from a
25 lawyer that is a member of the Scruggs Katrina Group. It's

1 this batch. And then this morning --

2 THE COURT: When you say batch, have you even
3 counted them?

4 MS. STANLEY: No, Your Honor. So the electronic
5 version and this set of documents and the ones that we
6 received this morning --

7 THE COURT: And in the electronic version you don't
8 know whether there's 10,000 bits of information or you have
9 turned it into pages? You don't know how many pages it would
10 turn into if you printed it all out?

11 MS. STANLEY: I do not, nor do I know how many
12 copies of either that were printed from the disk or how many
13 copies of the disk were made and who has them.

14 And then this morning we were given yet another batch of
15 documents from a lawyer in the Scruggs Katrina Group. So the
16 documents have come in in dribs and drabs from unidentified
17 lawyers who were not members of the Scruggs Katrina Group
18 from members of the Scruggs Katrina Group in addition to the
19 two boxes that were purportedly all of the documents that Mr.
20 Scruggs had or knew about that he gave to the Mississippi
21 attorney general.

22 So the point of the boxes and the envelopes is to
23 indicate that if there are more than 5,000 copies in the
24 bottom two boxes, because those are the only ones that were
25 purported to be a complete set of the documents from Mr.

1 Scruggs to the Mississippi attorney general, that if that is
2 purportedly one set of the documents, then there were
3 obviously more documents that were not collected that were
4 not returned and that have not yet been returned.

5 THE COURT: Well, you are making your closing
6 argument.

7 MS. STANLEY: Okay.

8 MR. ROGERS: Exactly.

9 THE COURT: Let's wait until your turn to make that.

10 MS. STANLEY: Okay.

11 THE COURT: Now, the courtroom deputy has handed me
12 Plaintiff's Exhibit 15 that hasn't been referred to. Is that
13 something that you plan to offer or is she just getting a
14 little premature over here?

15 THE COURTROOM DEPUTY: I was just getting ready.

16 MS. STANLEY: I believe Mr. Held was going to ask
17 Mr. Scruggs to identify that document.

18 THE COURT: All right. Anything further from Ms.
19 Rigsby?

20 MS. STANLEY: Not at this time, Your Honor.

21 THE COURT: Which one of you goes first, her lawyer
22 or Mr. --

23 MR. HAWLEY: Your Honor, I would like to, and I
24 think Mr. Rogers would like me to. Thank you, Your Honor.
25 Greg Hawley again for the Rigsby sisters.

1 CROSS EXAMINATION

2 BY MR. HAWLEY:

3 Q. Ms. Rigsby, I just have a few questions to follow up on
4 Ms. Stanley.

5 And I think there's so much confusion about the
6 documents, Your Honor, and I'll try not to walk her through
7 some of this initially.

8 But, Ms. Rigsby, I want to go over this time line that
9 Ms. Stanley has developed. And she refers to the documents
10 in batches. That's a word that she uses, but I'm going to
11 adopt it. You understand that word, don't you, in her
12 description of them?

13 A. Yes.

14 Q. Okay.

15 Well, the first batch of documents, as I understand it,
16 were the ones that you and your sister gave to Mr. Scruggs in
17 February of '06?

18 A. Correct.

19 Q. Okay. Did you keep your own copy of those or did you
20 give them all to Mr. Scruggs?

21 A. I think we turned over our only copy.

22 Q. Okay. So batch number two were these documents that were
23 developed in April, the engineering reports that you copied
24 over time; correct?

25 A. It was e-mail, miscellaneous that was copied over time.

1 Yes.

2 **Q.** Miscellaneous things gathered over time, and you turned

3 those documents over to lawyers, including an unnamed lawyer,

4 in April of that year; right?

5 **A.** Correct.

6 **Q.** Did you keep a copy of those documents?

7 **A.** No, I did not.

8 **Q.** Okay.

9 So then we get up to batch three, which we refer to as a

10 data dump set.

11 **A.** Correct.

12 **Q.** You know that term; right?

13 **A.** Yes.

14 **Q.** Okay. And you participated in making those, printing

15 copies at your home and then making duplicate copies of the

16 prints at a copy place; right?

17 **A.** Correct.

18 **Q.** Okay.

19 THE COURT: Now, let me interrupt because you are

20 assigned to a judge who is not computer literate. In a data

21 dump, does that mean that somebody punches a button and

22 everything in there starts spitting out in some kind of

23 chronological order without discriminating one document from

24 another, so that it's dumping everything within a broad

25 category of documents and just printing them out? Is that

1 what a data dump is?

2 MR. HAWLEY: Well, Your Honor, I'll tell you my

3 understanding, and maybe I should ask the witness. It's not

4 a term of art. It's a term that we have used to describe the

5 documents copied on the weekend of June 3rd, 2006.

6 THE COURT: Well, but then let me ask her.

7 MR. HAWLEY: Yes, sir.

8 THE COURT: That term has been used in the

9 courtroom, and it's describing an event of that date. In

10 acquiring the access that you acquired that's now been called

11 a data dump, did you undertake to differentiate in some way

12 document from document so that you were getting documents

13 only within a certain category or description, or were you

14 getting everything that had, let's say, the State Farm logo

15 on it or the Renfroe logo? How were you deciding or

16 discriminating, if you were, to get those documents that

17 turned out to be 8,000 or how many?

18 THE WITNESS: We had a list that we were working

19 from, so the word "dump" just came from the -- because it was

20 so many pages printed out, but we did discriminate. It

21 wasn't just dumping everything on the computer.

22 THE COURT: So you had made a handwritten list or

23 typewritten list of your own of what you were looking for or

24 were trying to get?

25 Let me, I guess, put it this way. Had you seen the

1 originals of those documents yourself before that where you

2 acquired them by the dump process?

3 THE WITNESS: No, sir, I had not.

4 THE COURT: You were searching for something?

5 THE WITNESS: I was searching, yes, sir.

6 THE COURT: So you weren't just getting copies of

7 things you already knew were there; you were looking for

8 things that you suspected were there. Would that be fair to

9 say?

10 THE WITNESS: Exactly.

11 THE COURT: Well, I'm trying to figure out why only

12 8,000 showed up when you punched the button that started the

13 machine working, why it didn't show fewer or more. How did

14 it decide? Or did everything that was in there within

15 certain categories pop up?

16 When I ask my law clerks to go to Westlaw and they use a

17 descriptive term, that thing is supposed to give them

18 everything within that category. Did you have a category

19 list of a way that you were trying to access certain things?

20 THE WITNESS: The computer is not set up that way,

21 so we had to ask for each section by a claim number. So it's

22 not just hit a button and we've got 8,000 copies. We had to

23 type in every claim number that we wanted information from.

24 THE COURT: All right. Now I'm following you. You

25 had the claim numbers and you were accessing claim files to

1 get what was in that claim file. So if you put a claim

2 number in there, you've got everything that was in that claim

3 number file, or you thought you were, you were supposed to

4 get?

5 THE WITNESS: No, sir. They are laptops, or

6 portable computers, so they are on an air card. So this is

7 very slow. So there were certain pieces of the file I

8 wanted. So I was going to file --

9 THE COURT: So you get the file number and then you

10 categorize within the file as to what you are looking for?

11 THE WITNESS: Yes, sir.

12 THE COURT: Okay. Excuse me. Go ahead. I'm not

13 getting literate, but I'm less illiterate than I was.

14 MR. HAWLEY: Well, I'm right there with you, Your

15 Honor, but I think this is helpful.

16 BY MR. HAWLEY:

17 **Q.** Ms. Rigsby, how did you decide what documents to look

18 for?

19 **A.** We concentrated on the engineer form that showed which

20 claims had an engineer assigned to them, and we went in

21 there. Basically we worked from those claim numbers.

22 **Q.** Okay. And had you seen some engineering reports before?

23 **A.** Some reports, yes, we had.

24 **Q.** Okay. And what did those engineering reports reflect

25 that you were trying to collect?

1 **A.** Well, we had seen in one case an example of two engineer
2 reports on one claim from the same engineering firm dated, I
3 believe, eight days apart, and the result as to what caused
4 the damage was different. The first one said that it was
5 wind damage and the second one said it was water damage. So
6 we had seen a duplicate report, so we were going in trying to
7 find other areas where there might be a duplicate report.

8 THE COURT: By the time of the dump episode, we call
9 it, you had had two conversations with Mr. Scruggs. So far
10 we've ascertained that. Did Mr. Scruggs -- And at that time
11 I agree that you may have had, probably did have, an
12 attorney-client relationship. And I don't know what the
13 implication of this is, and I'm going to give counsel a
14 chance to object. But because this is a unique situation
15 where Mr. Scruggs' activities are being examined and
16 evaluated by me, the connection between you is a little bit
17 more than just attorney-client.

18 And my question after all that is, did what you were
19 looking for and accessed in the April episode or the June
20 episode, the June episode, was it under the direction of or
21 at the suggestion of Mr. Scruggs? Did he advise you or
22 suggest to you what you should look for?

23 MR. HAWLEY: Well, I will object to that, I think,
24 on the attorney-client privilege, but I think I can help the
25 court.

1 THE COURT: Well, I need all the help I can get.

2 BY MR. HAWLEY:

3 **Q.** Ms. Rigsby, whose idea was the data dump?

4 **A.** It was mine.

5 **Q.** Yours and your sister Kerri?

6 **A.** Yes.

7 **Q.** And what caused you to have this idea?

8 **A.** We just felt like that the news of a mole, a suspected
9 mole, in the office had heated up, and we just felt like our
10 days were numbered. And we knew we just wanted to gather as
11 much information as we could to support what we had seen, the
12 fraud and the things that we had previously seen before we
13 were fired.

14 **Q.** Okay.

15 MR. HAWLEY: Your Honor, does that get what you were
16 asking about?

17 THE COURT: Yeah. That may obviate my inquiry.

18 BY MR. HAWLEY:

19 **Q.** Now, let me get to the end of the data dump. Well, first
20 of all -- Let's not get to the end of the data dump.

21 Earlier in your testimony when Ms. Stanley was asking
22 questions, you referenced 5,000 pages a couple of times. And
23 tell me again why your recollection is 5,000.

24 **A.** This all started during the 20/20 interview. The
25 reporter asked me how many documents we copied right there

1 with the camera and lights in my face, and I quickly counted
2 the boxes and the reams that I had purchased. So is it
3 accurate? You know, based on what I remembered at that time,
4 it was based on the number of -- or the number of boxes of
5 paper that I purchased.

6 **Q.** And that was 15,000 total?

7 **A.** Yes, sir. So that would include the original set and two
8 copies of an original set to equal 15,000 total.

9 **Q.** So about 5,000 in each set or copy set?

10 **A.** My best guess.

11 **Q.** What I would call a copy set.

12 Now, one --

13 MR. HAWLEY: Your Honor, are you happy with the term
14 copy set? Is that a term you all use in the courthouse?

15 THE COURT: Well, I was just going to say duplicate
16 sets, but --

17 MR. HAWLEY: All right.

18 BY MR. HAWLEY:

19 **Q.** Ms. Rigsby, we have three duplicate sets on June 5th;
20 right?

21 **A.** Yes.

22 **Q.** Monday, June 5th?

23 **A.** Yes, correct.

24 THE COURT: Just from the data dump?

25 BY MR. HAWLEY:

1 **Q.** From the data dump.

2 And prior to June 5th, you had retained no copies of
3 batch one and batch two; right?

4 **A.** Correct.

5 THE COURT: I thought she said she did retain a copy
6 of batch one earlier, just a few minutes ago.

7 MR. HAWLEY: I don't think so, Your Honor.

8 THE COURT: Didn't I understand that you said you
9 retained, you kept a copy of your first set?

10 THE WITNESS: No, sir.

11 THE COURT: You didn't say that?

12 THE WITNESS: No, sir.

13 THE COURT: All right. Well, I'll have that written
14 up because that was what I heard. And I'm capable of hearing
15 things wrong.

16 BY MR. HAWLEY:

17 **Q.** So back to June 5th, we're at batch number three. And as
18 of that date or prior to that weekend, you didn't retain any
19 copies you had given to your lawyers, batch one and batch
20 two?

21 **A.** That's my recollection.

22 **Q.** Batch three, to use Ms. Stanley's nomenclature, involves
23 three duplicate sets of the documents that you copied over
24 the data dump weekend, the weekend of June 3rd; right?

25 **A.** Correct.

1 Q. Okay. Now, so on that Monday, June 5th, one set was
 2 picked up by whom?
 3 A. An investigator with the attorney general's office.
 4 Q. And are those people you had dealt with prior to June
 5 5th?
 6 A. Not this particular person.
 7 Q. Other people in that office?
 8 A. Yes, that is correct.
 9 Q. You had spoken of them previously?
 10 A. Yes, I had.
 11 Q. Okay. And the second set was picked up by whom?
 12 A. Representatives of the FBI.
 13 Q. Okay.
 14 A. I had not met that particular person before, but I had
 15 spoken with the FBI.
 16 Q. These were people who were familiar with what was going
 17 on?
 18 A. That's correct.
 19 Q. Okay. And the third set was a set that you retained?
 20 A. Correct.
 21 Q. Okay. What did you do with that set?
 22 A. I had actually put those in my friend's car who had
 23 helped me make the copies and print them out, and she took
 24 them to her house for safekeeping.
 25 Q. Okay. And that's Michele that you talked about earlier?

1 A. Michele.
 2 Q. So with batch three, the data dump set, now is the first
 3 time that you are retaining a copy, your own duplicate copy,
 4 of what had been duplicated?
 5 A. Right.
 6 Q. Okay.
 7 And between June and August -- My understanding is you
 8 gave those documents to Mr. Scruggs around August 1st?
 9 A. Correct.
 10 Q. It may have been a little before, maybe a little after?
 11 A. (Witness nodding.)
 12 Q. Was it after you were employed by the Scruggs Katrina
 13 Group?
 14 A. Yes, it was.
 15 Q. Okay. And who hired you for the Scruggs Katrina Group?
 16 A. Dick Scruggs.
 17 Q. Okay.
 18 Now, when you delivered the documents from Michele's
 19 attic to Mr. Scruggs, where did you take them?
 20 A. To the Moss Point, his law office in Moss Point.
 21 Q. All right.
 22 Now, after you had made that delivery, did you have any
 23 documents in your possession, duplicates of batch one, batch
 24 two, or batch three, at that point, once they are in the Moss
 25 Point office?

1 A. Oh no. Not -- No. I don't think I did, no.
 2 Q. Okay.
 3 THE COURT: When did you deliver batch one and batch
 4 two to Mr. Scruggs' law firm or to anybody else?
 5 THE WITNESS: Well, batch one, he was at my house in
 6 February.
 7 THE COURT: Mr. Scruggs?
 8 THE WITNESS: Dick Scruggs was at my house in
 9 February, and Kerri and I gave him some documents then.
 10 THE COURT: You gave him batch one?
 11 THE WITNESS: Batch one.
 12 THE COURT: You decided on your own to do the dump?
 13 That was nobody else's suggestion?
 14 THE WITNESS: Kerri and I decided on our own.
 15 THE COURT: You decided that on your own. So you
 16 gave Mr. Scruggs the first document that you got in February
 17 and then you gave him the documents in April separately?
 18 THE WITNESS: Yes, sir. It was actually over a
 19 period of time. It wasn't just one day in April I handed him
 20 more. Between February and April --
 21 THE COURT: So as you acquired them, you gave them
 22 to him?
 23 THE WITNESS: Yes, sir.
 24 THE COURT: So when we say batch, you didn't deliver
 25 a batch. You delivered them one at a time or as you acquired

1 them?
 2 THE WITNESS: Yes, sir.
 3 THE COURT: Do you know how many different events or
 4 how many different deliveries there were of documents? Now,
 5 you said there were 20 maybe plus in the first group and 20
 6 to 30 or 20 to 50 in the second group. Did you deliver those
 7 two at a time, one at a time, three at a time, five at a
 8 time? Do you remember?
 9 THE WITNESS: No, sir.
 10 THE COURT: I can understand not being able to
 11 remember that.
 12 I've finished what I had so say.
 13 MR. HAWLEY: Thank you, Your Honor. I just want to
 14 clarify one point, Your Honor.
 15 BY MR. HAWLEY:
 16 Q. And that, Ms. Rigsby, relates to the April -- I'm
 17 sorry -- the February '06 documents, batch one?
 18 A. Yes.
 19 Q. How many meetings with Mr. Scruggs did that involve when
 20 you gave him documents in February?
 21 A. February was the initial meeting.
 22 Q. Right.
 23 A. And I'm guessing that there were approximately plus or
 24 minus 20 documents that we gave him that first time we met
 25 with him.

1 Q. Right.
 2 So batch one was one meeting's worth of documents?
 3 A. One meeting.
 4 Q. Batch two was several meetings of documents of the same
 5 ilk?
 6 A. Correct.
 7 Q. Okay.
 8 MR. HAWLEY: So, Your Honor, I think we're talking
 9 about one meeting in February, numerous meetings in April.
 10 Again, following Ms. Stanley's nomenclature, batch two was
 11 several small sets of documents.
 12 THE COURT: I think she called it dribbling.
 13 MR. HAWLEY: That was in the closing argument, Your
 14 Honor.
 15 THE COURT: Well, okay. But she did use that word.
 16 BY MR. HAWLEY:
 17 Q. In any event, when you get to August and you deliver the
 18 documents from Michele's attic to Mr. Scruggs' Moss Point
 19 office, did you have any more documents of your own that you
 20 had copied pursuant to the --
 21 A. No, I did not.
 22 Q. Okay.
 23 Did Kerri to the best of your knowledge?
 24 A. She did not.
 25 Q. Do you and Kerri talk regularly?

1 A. Yes, we do.
 2 Q. Did you talk regularly during this whole period when you
 3 were claims adjusters for the Katrina at work?
 4 A. Yes, we did.
 5 Q. Would you say that was every day or --
 6 A. About a half a dozen times a day.
 7 Q. Okay.
 8 So if she had documents, you would know it?
 9 A. I would know it.
 10 Q. Okay.
 11 So -- I may have asked you this. When did Mr. Scruggs
 12 hire you as a consultant?
 13 A. In June -- July, July '06.
 14 Q. Okay.
 15 And when you delivered these documents from Michele's
 16 attic, was that before that time or after that time?
 17 A. It was after that time.
 18 Q. Okay.
 19 When he hired you, did he discuss or did you discuss with
 20 him your employment contracts with Renfroe?
 21 A. No, I did not.
 22 Q. But you are certain that the documents delivered from
 23 Michele's attic were delivered after you were retained by him
 24 as a consultant?
 25 A. Yes.

1 Q. Thank you.
 2 Did you have an understanding of what Mr. Scruggs was
 3 going to do with the data dump set, the set from Michele's
 4 attic?
 5 A. I'm not sure I knew everything he wanted to do. You
 6 know, he had free range to do whatever he wanted to do with
 7 them. I considered those his documents at that point.
 8 THE COURT: Even though there was no written
 9 consulting agreement that was entered into, there was one
 10 entered into, according to you, before you delivered the
 11 product of the dump, you might say, in June.
 12 Did part of the consulting agreement include the
 13 obligation to deliver to Mr. Scruggs what you were obtaining
 14 while still employed with Renfroe? In other words, you had
 15 an agreement, a consulting agreement, and you've testified
 16 that there was to be an annual salary of \$150,000. When
 17 somebody is getting ready to pay somebody that kind of money,
 18 ordinarily, there is an understanding as to what is going to
 19 be done for that money. Was one of the things that was going
 20 to be done for that money as a consultant to obtain these
 21 documents or documents of that sort from the State Farm file?
 22 THE WITNESS: I don't remember that being a
 23 condition. I don't remember it like that.
 24 THE COURT: You don't remember what you were going
 25 to do for \$150,000 a year?

1 THE WITNESS: No. It was -- I think they were
 2 mutually exclusive. The consulting was for the salary. It
 3 was a year-to-year type thing as he needed us. So we were
 4 consulting, helping on some of the cases he was going to try.
 5 As far as him saying that part of the agreement for me to
 6 give you this job is to turn over the documents, that did not
 7 happen. That's not a discussion we had. It was not
 8 contingent on the employment.
 9 BY MR. HAWLEY:
 10 Q. Well, Ms. Rigsby, what is the nature of your expertise
 11 that caused him to want to hire you?
 12 A. Well, Kerri and I have been working in insurance for
 13 eight years. So we know how to read policies. We have the
 14 procedures. We know how to review the file. A claim file is
 15 not easy to understand, if you haven't seen one before, and
 16 to decipher. So we spent quite a bit of time going through
 17 log notes and explaining procedures, or are all the
 18 components of the file here, are they not, things like that.
 19 Q. And did you consult with them on one or more files in the
 20 month of July?
 21 A. Oh yes. We were working actually on a Nationwide case
 22 the month of July.
 23 Q. Okay. And did the documents in Michele's attic come up
 24 at all in that consultation?
 25 A. No. We were way too busy on that Nationwide case to be

1 focused on anything but that.

2 **Q.** What was your first consultation work, the actual work

3 you did for Mr. Scruggs, after you became a consultant? What

4 was it, this Nationwide case?

5 **A.** It was. It was to review the claim files in the

6 Nationwide case.

7 **Q.** Did you review documents in that case?

8 **A.** We did, yes.

9 **Q.** And I assume they were Nationwide documents?

10 **A.** Yes, they were.

11 **Q.** Okay.

12 Had no relationship or bearing to the State Farm

13 documents in Michele's attic?

14 **A.** Oh no.

15 **Q.** And did your sister consult in that Nationwide case also?

16 **A.** She did.

17 **Q.** You said a minute ago, but I want to clarify and make

18 sure I understood what you said. When you gave the documents

19 over -- Well, first of all, what caused you to -- Who decided

20 to take the documents from Michele's attic and give them to

21 Mr. Scruggs?

22 **A.** Michele decided that it was time to get them out of her

23 attic. I don't know that I would have thought about them

24 again. I don't remember if she was going on vacation. We

25 were kind of in a paranoid frenzy at that point. We had been

1 given a lot of warnings by the attorney general's

2 investigators. They were ex-policemen. You know, the FBI,

3 they were always warning us about you might be under

4 surveillance. Watch for this truck. You know, double check.

5 Don't go anywhere alone. So they kind of had us a little

6 paranoid, to be quite honest. And I think my paranoia went

7 over to my friend, and she didn't want them in her house

8 anymore.

9 So at that time I went and picked them up and took them

10 straight to Dick Scruggs' office. And I don't even know how

11 soon it was after that that he even looked at them or if he

12 spent any time with them. I don't believe there was anything

13 in that data dump that he used, ever used before he turned

14 the documents over.

15 **Q.** Okay. And once you gave the documents to Mr. Scruggs and

16 his firm in August or late July, what was your understanding

17 of whose documents they were at that point?

18 **A.** I did not want those documents. And when we turned them

19 over to Dick in late July or August, I would have not gone

20 back in his office and retrieved them without asking. And I

21 left my purse there. I'd go get my purse, but I considered

22 those his documents.

23 **Q.** Okay. Let me ask you one more thing. Ms. Stanley

24 mentioned a fourth batch. And I've lost the date for it, but

25 I think it was in the fall of '06, there's a reference to

1 some documents that you found. Can you describe those for

2 the court?

3 **A.** Yes. I don't have a great recollection. But I was

4 cleaning out my office, and there were some old materials I

5 had. It was training materials like how to measure a

6 triangle and how to measure a roof. I think the training

7 file I had put together, what a file looks like, some things

8 like that. It was just a small little file that had some old

9 documents in them. They weren't even Katrina documents.

10 **Q.** Those documents predated the Katrina hurricane?

11 **A.** Oh yes.

12 **Q.** And predated your work as a claims adjuster in

13 Katrina-related insurance adjusting work?

14 **A.** Yes.

15 THE COURT: When you say "in my office," was this an

16 office you were occupying within The Scruggs Law Firm at that

17 time?

18 THE WITNESS: No, sir. It was my home office.

19 THE COURT: Your home office. All right.

20 BY MR. HAWLEY:

21 **Q.** So you found this fourth batch of documents in your home,

22 but they related to pre-Katrina, manuals and that sort of

23 thing?

24 **A.** Exactly.

25 **Q.** Okay.

1 THE COURT: Did you recognize the folder that Ms.

2 Stanley held up as if it contained those documents when she

3 held up some file folder?

4 THE WITNESS: No, sir.

5 MR. HAWLEY: Your Honor, may I have permission to

6 touch these boxes of documents?

7 THE COURT: Yes, you may have my permission.

8 MR. ROGERS: I object, Your Honor.

9 THE COURT: I would sand off my fingertips though

10 before --

11 (Laughter.)

12 BY MR. HAWLEY:

13 **Q.** Ms. Rigsby, you indicated earlier there were two full

14 boxes plus a few more of documents that were in each of the

15 three sets that were given away on June 5th?

16 **A.** That's correct.

17 **Q.** One set to the attorney general, one to the FBI or some

18 federal authority, and one set to Michele; right?

19 **A.** Right.

20 **Q.** Can you give us an estimation today about whether this

21 set of documents looks like the approximate volume of one

22 duplicate set of those documents?

23 **A.** It looks pretty close. I mean I can't see in front of

24 the box.

25 **Q.** You can't see inside the box. Okay.

1 All right. Ms. Stanley said earlier when she was, I
 2 think, talking about 8,000 documents -- excuse me, Jack --
 3 she was including this in the 8,000?
 4 **A.** Okay.
 5 **Q.** Did you have that understanding?
 6 **A.** That was what I understood.
 7 **Q.** Okay. So I don't know if that's 3,000 or not, but does
 8 this look something like it's data dump, one set of data dump
 9 documents?
 10 **A.** Yes, sir, it does.
 11 **Q.** Okay.
 12 MR. HAWLEY: Your Honor, I think that's all I have
 13 right now.
 14 THE COURT: Any follow-up within the scope of his
 15 cross examination? Oh. Excuse me. Mr. Rogers, you can have
 16 your shot at her if you want to take it.
 17 MR. ROGERS: Thank you. Very briefly.
 18 CROSS EXAMINATION
 19 BY MR. ROGERS:
 20 **Q.** Ms. Rigsby, at the time that you first met with Dick
 21 Scruggs, you and your sister, in this February meeting, were
 22 you aware that The Scruggs Law Firm was already representing
 23 hundreds of State Farm policyholders?
 24 **A.** Yes, I was.
 25 **Q.** And so as a result of that, you were aware that The

1 Scruggs Law Firm had their own private contractual
 2 arrangements with hundreds of other policyholders who had
 3 their own private legal rights to protect?
 4 **A.** Yes.
 5 **Q.** And then thereafter did you begin meeting with federal
 6 and state law enforcement authorities outside the presence of
 7 Mr. Scruggs and his law firm?
 8 **A.** Yes, I did.
 9 **Q.** This April representation and the documents that have
 10 come to be described here by Ms. Stanley as the second batch,
 11 do you know whether or not Dick Scruggs retained those
 12 documents or whether those documents were actually retained
 13 by the other unnamed lawyer?
 14 **A.** I don't know which is the case.
 15 **Q.** You only took one set over a period of time; you didn't
 16 take a document and get that copy back; that's correct?
 17 **A.** That's correct.
 18 **Q.** So that set, you don't know whether it stayed at The
 19 Scruggs Law Firm or not, do you?
 20 **A.** That's correct.
 21 (Discussion off record.)
 22 THE COURT: Ms. Stanley.
 23 MS. STANLEY: Your Honor, I would like to offer the
 24 transmittal letter that was attached to the documents that
 25 were handed to us this morning as Exhibit 16. This is the

1 original and my only copy. Is my timing off? Do I need to
 2 wait until your deputy comes back?
 3 THE COURT: Any objection to the transmittal letter?
 4 MR. ROGERS: Only to this extent, Your Honor. I was
 5 silent about the others because we want Your Honor to get to
 6 the bottom of this. But the contempt is against Mr. Scruggs
 7 and his law firm. These letters have been offered into
 8 evidence for the purpose of showing that efforts were made
 9 beyond that to get documents back. And I don't want that to
 10 be used against us.
 11 THE COURT: Well, I don't know that it will or will
 12 not, or should be or shouldn't be, but I hear you. And I'm
 13 going to receive it with your pointing that out to me in
 14 advance.
 15 MR. ROGERS: Yes, sir. Thank you.
 16 THE COURT: All right. 16 is in. The courtroom
 17 deputy stepped out to get the water pitcher filled, so we'll
 18 have to remind her to put it on the docket sheet when she
 19 gets back.
 20 Hand it to me, and I'll be sure it gets in the record.
 21 Or hand it to my law clerk over there.
 22 MS. STANLEY: (Complying.)
 23 REDIRECT EXAMINATION
 24 BY MS. STANLEY:
 25 **Q.** Ms. Rigsby, you had talked earlier about the information

1 that you were providing as a consultant to the Scruggs
 2 Katrina Group, and you talked about your expertise on how to
 3 read a claims file and how to adjust a case. All of the
 4 knowledge that you used for that consulting service, this is
 5 knowledge that you obtained while you were an adjuster for
 6 Renfro; is that not right?
 7 **A.** Yes.
 8 **Q.** And now Mr. Rogers has talked about the documents that
 9 were -- Well, let me back up on that just a second.
 10 The documents that you handed to Mr. Scruggs in any of
 11 the four batches, those are all documents that are central to
 12 this case, are they not? Those are the documents that are at
 13 issue in this lawsuit. Do you understand that?
 14 MR. HAWLEY: Your Honor, I object to the extent that
 15 that calls for a legal conclusion. I'm not sure I know what
 16 is central to the lawsuit.
 17 THE COURT: Well, I don't know what is central.
 18 It's got, I guess, a pretty broad spectrum here. I think
 19 you've got the building blocks for an argument along those
 20 lines if and when you need to make it without having her to
 21 agree with you. So I'll sustain. I believe that's maybe
 22 beyond the scope of her expertise.
 23 MS. STANLEY: Okay.
 24 BY MS. STANLEY:
 25 **Q.** Ms. Rigsby, did you understand that the documents that

1 are listed as the four batches of documents are at issue in
 2 this lawsuit?
 3 **A.** Yes.
 4 **Q.** And is it not true that the data dump documents are very
 5 much at issue in this April representation?
 6 **A.** I'm not sure I'm going to talk about the April
 7 representation, I'm at liberty to talk about that.
 8 **Q.** My question is, are the documents from the data dump at
 9 issue in this April representation?
 10 **A.** I don't think I understand the question exactly.
 11 **Q.** I'm sorry?
 12 **A.** Could you repeat it one more time? I'm not sure what
 13 you're asking.
 14 **Q.** Are the documents from the data dump at issue in this
 15 April representation?
 16 **A.** I guess they could be.
 17 **THE COURT:** I agree with her. I'm not sure I
 18 understand the question either.
 19 **BY MS. STANLEY:**
 20 **Q.** Well, Mr. Rogers brought up a point of what documents
 21 were being retained by this unnamed other lawyer, and that's
 22 what I'm trying to ascertain starting with his question. And
 23 what I understand is that it is the data dump documents that
 24 are retained by and at issue in this April representation.
 25 **A.** I would say that a portion of the June documents could be

1 an issue in the April lawsuit. Is that what you are asking?
 2 **Q.** Yes.
 3 **A.** Okay. I would say some of those could be, yes.
 4 **Q.** Okay.
 5 **MS. STANLEY:** Just a second and let me consult with
 6 my lawyers.
 7 **(Discussion off record.)**
 8 **THE COURT:** Following up on that and making sure I
 9 understand it, if you know or have a judgment, did the
 10 unknown lawyer obtain and have in his possession or hers
 11 documents that were not in the possession of and retained by
 12 Mr. Scruggs? Was there a differentiation somewhere between
 13 documents that Mr. Scruggs had and documents that the unnamed
 14 lawyer had?
 15 **THE WITNESS:** I don't believe so.
 16 **THE COURT:** You don't believe so. Well, that's a
 17 fair answer. You don't have a judgment that they were
 18 different, that there were some documents that escaped from
 19 Mr. Scruggs and somehow went into the possession of somebody
 20 else, but Mr. Scruggs didn't keep them.
 21 Now, this gets to the question of if the same documents
 22 were in the possession of Mr. Scruggs that were in the
 23 possession of the unnamed lawyer, then there was a
 24 duplication at that point. And that's why I asked.
 25 **BY MS. STANLEY:**

1 **Q.** Do you know whether or not --
 2 **THE COURT:** You couldn't have one piece of paper in
 3 the possession of two people at the same time.
 4 **THE WITNESS:** I don't know the answer.
 5 **BY MS. STANLEY:**
 6 **Q.** You don't know the answer whether or not --
 7 **A.** I don't know if they were duplicated or turned over. I
 8 do not know that.
 9 **Q.** All right.
 10 When you were doing the data dump, is this the kind of
 11 box that the reams of paper came in, the blank reams of
 12 paper? So this says that there are 5,000 sheets in this box.
 13 This is the kind of box that you had when you were making the
 14 copies and when you were storing copies; is that correct?
 15 **A.** Yes.
 16 **Q.** All right. If this holds 5,000 sheets, there is room to
 17 spare in there?
 18 **THE COURT:** Have you got a scale that you are going
 19 to bring in here in a minute?
 20 **MS. STANLEY:** No, sir.
 21 **THE COURT:** Well, it might not be a bad idea because
 22 if you put 5,000 sheets in there and put them on a scale and
 23 then you put that other box on a scale, they ought to weigh
 24 the same if there's 5,000 in there.
 25 **MS. STANLEY:** Yes, sir, they could.

1 **THE COURT:** Do you think that would be fair?
 2 Unless -- Wait a minute now. There are different qualities
 3 of paper and different thicknesses. Some of it might be
 4 parchment. So I don't know whether that would tell us
 5 anything.
 6 **MS. STANLEY:** Pass the witness, Your Honor.
 7 **MR. HAWLEY:** Nothing further, Your Honor.
 8 **MR. ROGERS:** One follow-up I meant to ask earlier.
 9 **RE-CROSS EXAMINATION**
 10 **BY MR. ROGERS:**
 11 **Q.** In the February meeting there were more or less 20
 12 documents. To be more fairly stated, it would be more or
 13 less 20 pages?
 14 **A.** Probably.
 15 **Q.** And would one of those pages or one of those documents,
 16 the engineering report that you discovered that had Leckie
 17 King, a vice president of State Farm's handwritten sticky
 18 note on it that says "Do not pay"?
 19 **A.** "And do not discuss."
 20 **Q.** "And do not discuss"?
 21 **A.** Yes, sir.
 22 **Q.** And that document was kept separate from that
 23 individual's claims file?
 24 **A.** Yes, sir.
 25 **MR. ROGERS:** Thank you.

1 MR. HAWLEY: Your Honor, I'm sorry. That's the
2 piece of paper I was looking for. Could I ask the witness
3 one more question?

4 THE COURT: Well, if she answers it, then that will
5 give you another question. But let's see. Yeah, I'll let
6 you ask one.

7 MR. HAWLEY: Your Honor, I just want to give her a
8 copy of the injunction. I think everyone in here as a copy
9 of the injunction. But she's read it.

10 RE CROSS EXAMINATION

11 BY MR. HAWLEY:

12 Q. Ms. Rigsby, have you read this injunction before?

13 A. Yes.

14 Q. The one from this court?

15 A. Yes.

16 Q. Okay. And I just want to focus your attention on the
17 last part of it right before Judge Acker's signature.

18 I'm sorry. It's on Page 14 of the order. But where it
19 describes the documents that are within the scope of the
20 injunction. Just start reading, "but not limited to" on Page
21 14 and just tell me what that says.

22 A. "...but not limited to State Farm Insurance Company and
23 which refer or relate to any insurance claims involving
24 damages caused or alleged to have been caused by Hurricane
25 Katrina...."

1 Q. Thank you.

2 Now, just to put a fine point on this. Batch four of
3 these documents that Ms. Stanley keeps referring to, you said
4 earlier that those documents predated Katrina; right?

5 A. That's correct.

6 Q. Okay.

7 MR. HAWLEY: So they are beyond, Your Honor, the
8 conclusion, the scope of this injunction.

9 THE COURT: Mr. Hawley asked you to look at the
10 injunction. And I ask you to look at it with me too, on that
11 same page, Page 14.

12 THE WITNESS: He took it away.

13 THE COURT: Can you let her keep that?

14 MR. HAWLEY: (Complying.)

15 THE WITNESS: Thank you.

16 THE COURT: On Page 14 in the center paragraph that
17 starts with "Defendants and their agents," do you see that?

18 THE WITNESS: Yes, sir.

19 THE COURT: The last phrase says "...are further
20 enjoined not to further disclose, use or misappropriate any
21 material described in the preceding paragraph unless to law
22 enforcement officials at their request."

23 Now, we might debate the word "use," which I'm getting
24 ready to ask you about. I think we might debate
25 "misappropriate," and that might be a legal term that lawyers

1 might debate. "Disclose," I think is a word of common
2 understanding, and I think you'd understand it the same way I
3 do.

4 Are you able to say and tell me under oath that after you
5 knew about this injunction, you, not anybody else, you never
6 used -- and use that in a broad sense -- never used any
7 material described in that preceding paragraph? Never used
8 it? Can you tell me that you never used any of this
9 material?

10 And I'll help you understand "use" as I understand it.

11 If in working as a consultant for Mr. Scruggs and his law

12 firm and the Katrina group, you consulted using materials, I

13 think it would be violating that injunction. That's a

14 tentative conclusion that I use, and that's why I ask you.

15 You are now under oath before me. Did you ever use with

16 anybody or by yourself any of those materials described after
17 that injunction was issued?

18 THE WITNESS: No, sir.

19 THE COURT: You did not?

20 THE WITNESS: No, sir.

21 THE COURT: She's answered my question.

22 MR. HAWLEY: That's all I have, Your Honor.

23 THE COURT: You may step down. Thank you, ma'am.

24 Who will you have, Mr. Held?

25 MR. HELD: We'd like to call Mr. Scruggs as an

1 adverse witness.

2 THE COURT: All right. Mr. Scruggs, if you would.

3 MR. ROGERS: He has not been subpoenaed or requested

4 to testify, Your Honor, but he's here as an officer of the

5 court subject to your jurisdiction without waiver of our

6 defenses.

7 THE COURT: All right. It won't waive any defense

8 he has to be called. Now, I can't say what he might answer

9 that might implicate something eventually, but that doesn't

10 mean that you don't have the obligation as his lawyer to

11 object if you find something objectionable. But under the

12 circumstances, you understand that, I think.

13 So, Mr. Scruggs, if you would, be sworn.

14 RICHARD F. SCRUGGS, sworn/affirmed

15 BY THE COURTROOM DEPUTY:

16 Q. Please state your name for the record.

17 THE WITNESS: Should I speak into the microphone, or
18 can you hear me?

19 THE COURT: Just speak up. I don't know whether

20 our mics work. As long as Ms. Flowers hears you and I hear

21 you and the interrogator hears you, I don't care about those

22 audience people back there. They can raise their hand and

23 complain, and I might or might not do anything about it.

24 But just as long as I hear you and the interrogator hears

25 you.

DIRECT EXAMINATION

1
 2 BY MR. HELD:
 3 **Q.** Mr. Scruggs --
 4 **A.** I'm sorry. Do you want me to talk into this mic?
 5 **Q.** I can hear you all right.
 6 **A.** Can you hear me okay?
 7 **Q.** Yes.
 8 **A.** I don't know if it's because of this. Can you hear me?
 9 Okay.
 10 **Q.** You are licensed in practicing law in the state of
 11 Mississippi?
 12 **A.** That's correct. And my name again in response to the
 13 deputy's request is Richard F. Scruggs.
 14 **Q.** All right, sir.
 15 I'm going to get right to the point and ask about your
 16 relationship with the Rigsby sisters. One relationship was
 17 as an attorney-client; is that correct?
 18 **A.** That's correct.
 19 **Q.** And as I understand from Ms. Rigsby's testimony, that
 20 relationship was established in February '06?
 21 **A.** I think initially it was, yes.
 22 **Q.** Has that relationship continued up until this time?
 23 **A.** Not the same type relationship.
 24 **Q.** Okay. What was the undertaking? I'm not asking you what
 25 discussions were had between you and the Rigsby sisters, but

1 what was the nature of the undertaking of your first
 2 representation of them?
 3 **A.** You know, I'm not sure that as the lawyer with a
 4 lawyer-client relationship that I am free to just discuss
 5 that with you at this point.
 6 **MR. ROGERS:** I'm going to object on the basis that
 7 that invades the attorney-client privilege.
 8 **MR. HAWLEY:** Which one is that, Your Honor?
 9 **THE COURT:** Well, I'm a little rusty on who asserts
 10 the attorney-client privilege, the lawyer or the client or
 11 either.
 12 **MR. ROGERS:** It belongs to the client. The attorney
 13 is at risk of potentially --
 14 **THE COURT:** So Mr. Hawley is on his feet. Is he
 15 asserting the attorney-client privilege?
 16 **MR. HAWLEY:** Yes, sir.
 17 **THE COURT:** All right. It's been asserted by
 18 everybody who can possibly assert it, and I'll recognize that
 19 Mr. Scruggs can't be asked about what the undertaking was in
 20 a broader sense. I think if somebody comes in to you
 21 confidentially and shares with you even, you know, what it
 22 was, I think they can assert the attorney-client privilege on
 23 that.
 24 BY MR. HELD:
 25 **Q.** At the time that they came in to consult with you and

1 open with you an attorney-client relationship, did they
 2 deliver at that time documents that were taken from State
 3 Farm files?
 4 **A.** I guess I would have to say the same thing. If the
 5 client doesn't waive what they disclose to me, I'm not really
 6 at liberty to do it. It's not that I'm trying to conceal
 7 anything.
 8 **Q.** Well, I think you testified on direct that she delivered
 9 a batch of approximately 20 pages in February of 2006.
 10 **MR. HAWLEY:** Your Honor, this is where I get into
 11 the objection that I tried to get out earlier. And I respect
 12 what the court said. We were very deferential on the
 13 Rigsbys' deposition to allow Ms. Stanley to go pretty far,
 14 but I think the scope of this representation falls within the
 15 privilege and the documents delivered to him in that first
 16 attorney-client relationship falls into it also.
 17 **THE COURT:** Well, we have, and I would say that as
 18 of now for what it's worth to all of us, it would be very
 19 difficult for me to find on this evidence that 20 or more
 20 copies of materials from State Farm were not delivered. So
 21 if they weren't, somebody could say so. If they were,
 22 somebody could say so. But as of now, that seems to be where
 23 we're headed.
 24 Now, what the importance of that is, I don't know. But I
 25 think he can recognize the attorney-client privilege and can

1 say what he said, that he doesn't feel able to say and he's
 2 not saying, and I think he's right.
 3 **MR. HELD:** Judge, I submit that that was waived on
 4 direct examination. Ms. Rigsby admitted that she delivered
 5 20 documents.
 6 **THE COURT:** Well, let's put it this way. I think I
 7 tentatively found for you on that fact, if it's important to
 8 you. So he can confirm it or he can deny it or he can
 9 decline to express on it. And if he declines to express on
 10 it for whatever reason, I still think that she gave him 20 to
 11 30 documents. And I don't think she gave them to him,
 12 documents, that had something to do with a horse ring in
 13 Texas. I don't think so.
 14 **MR. HAWLEY:** Your Honor, I really do not want to
 15 obstruct his examination. But if we could have the same
 16 stipulation that Ms. Stanley and I had earlier, I think we
 17 can work through some of his issues. And that stipulation
 18 was that we would allow these questions to go up to a certain
 19 point and then perhaps --
 20 **THE COURT:** I think that makes sense. And if you
 21 want to back off a little bit and let him go just as far as
 22 the fact of the documents without getting into exactly what
 23 they were or what was said about them.
 24 **MR. HAWLEY:** Yes, sir. And that's where I'm
 25 heading.

1 THE COURT: Then he can confirm what I already
2 tentatively found, if he will or can remember.

3 MR. ROGERS: I think the proviso is that if
4 Renfroe's counsel would stipulate that they would not later
5 argue in a different form that this was somehow a general
6 waiver of the privilege.

7 THE COURT: Well, if you all want to bargain about
8 it, you know, I can have a recess and you all can bargain
9 behind my back. I'd rather not be a participant in this.

10 MR. ROGERS: I'm asking for that stipulation so that
11 Mr. Scruggs can more freely answer the questions without risk
12 of somehow inadvertently waiving the entire privilege.

13 THE COURT: Well, Mr. Hawley has already suggested
14 that the stipulation that was in place at the deposition be
15 reinstated for the purposes of this examination, and that
16 made sense.

17 MR. ROGERS: Yes, sir.

18 THE COURT: Now, whether that would lead to further
19 waiver is a question that you don't want to have to get into
20 that, and I don't want to either.

21 Ms. Stanley is on her feet. What does he want to
22 contribute?

23 MS. STANLEY: I just wanted to say that we did have
24 that stipulation in the depositions, and I have no objection
25 to continuing that stipulation as it --

1 THE COURT: Well, let's say this. Right now I'm not
2 going to predict where y'all are going with this, but I'll
3 say that my tentative feeling is that beyond the mere what
4 was delivered or not delivered, any conversation that
5 accompanied that would be privileged. But the mere fact that
6 there was a delivery or not delivery and what was delivered,
7 if anything was delivered, we can go into, stipulated.

8 All right. Go ahead, Mr. Held.

9 MR. HAWLEY: Thank you, Your Honor.

10 BY MR. HELD:

11 Q. So, Mr. Scruggs, is the answer then that, yes,
12 approximately 20 pages were delivered to you at that first
13 meeting?

14 A. 20 pages approximately were delivered.

15 Q. And were some of those pages, do they contain these
16 little sticky notes on them?

17 A. I'm not sure how far I should go other than documents
18 were delivered to me.

19 THE COURT: Well, back to opening the door, I
20 wondered why Ms. Stanley didn't object to the last questions
21 that Mr. Rogers asked because they were outside the scope of
22 her last examination. But maybe she didn't object because
23 she wanted Mr. Held to have an opportunity to go into the
24 sticky notes. I don't know what is in all of y'all's minds
25 when you do these things. But I do think that when Mr.

1 Rogers asked about sticky notes after one of those meetings,
2 then you can ask about the sticky notes. So if there's an
3 objection, and there hasn't been one yet, I'll let you ask
4 the question about the sticky notes.

5 MR. HELD: All right.

6 BY MR. HELD:

7 Q. What I said before, do you recall whether there were
8 little sticky notes on any of those 20 pages?

9 THE WITNESS: If I'm being directed to answer, Your
10 Honor.

11 THE COURT: Yes, you are directed.

12 A. Then there was one sticky note which I think Ms. Rigsby
13 testified to earlier today.

14 BY MR. HELD:

15 Q. Just out of curiosity, is that one that wound up in
16 connection with the McIntosh litigation?

17 A. Again, I'm trying to be extremely careful in terms of
18 divulging attorney-client conversations and what they
19 contained and what --

20 MR. HELD: Excuse me.

21 (Discussion off record.)

22 MR. ROGERS: The McIntoshes are policyholders of
23 State Farm, separately represented by The Scruggs Law Firm.

24 And I think what Mr. Scruggs is concerned about is

25 potentially not only having privilege as it relates to the

1 defendants here, but potentially running afoul of privileges
2 of these other policyholders.

3 THE COURT: Well, as Mr. Held prefaced his question
4 with, just out of curiosity, and we'll leave curiosity aside
5 and go on to the relevance matter.

6 MR. HELD: All right. I think it will be relevant.

7 BY MR. HELD:

8 Q. There is an exhibit in the pleadings in this case, the
9 McIntosh document that's in the McIntosh case, and it's, I
10 think, an engineer's report with a sticky on it. Do you
11 recall that?

12 A. Yes, sir, I do. I recall it.

13 Q. And that document actually came from the Rigsby sisters
14 and was one of the first documents delivered to you in
15 February 2006, was it not?

16 THE WITNESS: If I'm being instructed to answer.

17 THE COURT: I think you can be fairly instructed to
18 answer that one.

19 A. Yes.

20 BY MR. HELD:

21 Q. Since December 11th, I believe that's the date that the
22 injunction became effective, have any of those documents from
23 the Rigsby sisters been used at all in the processing of your
24 law work as part of the Scruggs Katrina Group?

25 MR. ROGERS: Your Honor, that invades privileges

1 across the board with hundreds of policyholders that State
2 Farm is representing.

3 MR. HELD: That hits on the very nature of your
4 injunction.

5 THE COURT: It's overruled. That's the core issue,
6 but it may be the core issue in another case that is not
7 before me and one in which, if it preceded, would, as not
8 true yet, or at least I don't think it is right now, because
9 we have narrowed the inquiry to the numbers of documents and
10 things that were disgorged or delivered in contrast to what
11 was taken. But if we go beyond that and ask that question to
12 this witness, I think he would need to be Mirandized before
13 being asked that question, because I think that goes to the
14 heart of any criminal contempt inquiry.

15 MR. HELD: All right. Are you instructing that I
16 not go there right now?

17 THE COURT: I think if Renfro, who is not a
18 prosecutor and not a U. S. attorney and has no -- can, and as
19 it has done, can suggest to me that there's a criminal
20 contempt and that there's been contumacious conduct by this
21 now witness, which deserves criminal sanction, then I have to
22 say that the answer to that question might well constitute
23 confession.

24 And if you want to pursue it, I don't know whether it
25 might not be against your interest. I don't know. I mean

1 I'll confess, and I think I've confessed several times in
2 this case, I've never been right here before. I don't think
3 anybody has been quite here before.

4 MR. HELD: Nor have I.

5 THE COURT: So if I were he, and I've already said
6 that I've given too much advice, but I think that his Fifth
7 Amendment privilege, without talking about attorney-client
8 privilege, would protect him if he invoked it on that
9 question. That's what I think.

10 MR. HELD: Well, let me withdraw it for the moment
11 to try to move forward, and then maybe we'll get back into
12 it.

13 THE COURT: All right.

14 BY MR. HELD:

15 Q. And I kind of got far afield. I was asking about your
16 relationship with the Rigsby ladies, and you said that the
17 first relationship was in February '06 as attorney-client.
18 Is there another attorney-client relationship going on now
19 separate from that?

20 A. Yes.

21 Q. Has there been an attorney-client relationship with the
22 Rigsby sisters from February '06 to the present even though
23 that relationship may have changed, in other words,
24 continuous?

25 A. Yes.

1 Q. When were the Rigsby sisters hired as consultants?

2 A. I want to say mid-summer, Mr. Held, but --

3 Q. If it would help, I think, looking at my notes --

4 A. Of '06. I'm sorry.

5 Q. I think it said, yeah, July of '06. So about mid-summer?

6 A. That's about right.

7 Q. Have they worked continuously since that time?

8 THE COURT: Continuously in the sense that they
9 report to work every day or --

10 BY MR. HELD:

11 Q. Has that relationship continued?

12 THE COURT: -- continued, no interruption in the
13 relationship?

14 MR. HELD: Right.

15 A. There's been no interruption in the relationship, that's
16 correct.

17 THE COURT: Do they occupy space that you furnish
18 them or are they independent consultants where they occupy
19 their own space.

20 THE WITNESS: Both. We have a desk in our office in
21 Moss Point where they come periodically and as needed. And
22 they have their own, as Ms. Rigsby testified to earlier
23 today, her own home office where she conducts work as well.

24 BY MR. HELD:

25 Q. Are they consultants to your law firm and to the Scruggs

1 Katrina Group or just to one as opposed to both?

2 A. The Scruggs Katrina Group is with whom they have the
3 relationship, the employer/employee relationship.

4 Q. And who is involved in the Scruggs Katrina Group? Are
5 there a number of law firms?

6 A. Yes, there are.

7 Q. How many?

8 A. There are five law firms that have been involved. One
9 has recently dropped out, for lack of a better term. But
10 that's only in the last couple of weeks.

11 THE COURT: Does the Scruggs Katrina Group, which
12 you might, I guess, describe as a consortium, would that be a
13 fair description of it? What would you call it? It's loose
14 or is it formal in a written document?

15 THE WITNESS: It's a written document, yes, sir, it
16 is. But it came about as a result of Katrina.

17 THE COURT: Well, it's an entity, I guess, that has
18 an existence separate from the sub-entity?

19 THE WITNESS: Yes, sir.

20 THE COURT: The members of the group are separate,
21 but they are together in the group. The group is an entity?

22 THE WITNESS: That's correct.

23 THE COURT: Is it the group that files the W-2 Form
24 for the consultants, or is it the Scruggs group?

25 THE WITNESS: I don't know the answer to that. I

1 just don't know the answer to that. And I'm not sure that
 2 it's a W-2 --
 3 THE COURT: Well, of course --
 4 THE WITNESS: -- or a 1099.
 5 THE COURT: -- if they are consultants, that is,
 6 pure independent contractors, you wouldn't file a W-2 Form, I
 7 guess. If they are employees though, you would. And when
 8 you use the word "consultant," and we're talking about the
 9 relationship, I need to know whether they are, quote,
 10 employees. And if they are, of what entity are they
 11 employed? Or are they consultants? That means independent
 12 contractors which provide a service and send a bill for it.
 13 But when you talk about \$150,000 a year, that sounds like an
 14 employment agreement, sort of, but I don't know, because Ms.
 15 Rigsby said it was not in writing.
 16 BY MR. HELD:
 17 Q. How would you describe it, Mr. Scruggs, what is the
 18 relationship between whoever is using the services of the
 19 Rigsbys?
 20 A. To answer the court's question, I don't know how the
 21 bookkeepers or accountants treat their status with us, as
 22 employees or consultants, and whether it's a 1099 or a W-2.
 23 But here's how it came about. We did not want to -- I am the
 24 lead counsel in the Scruggs Katrina Group, my firm. And I do
 25 not want to pay them more than your client was paying them to

1 do exactly the same thing on an annual basis, and that's
 2 where the \$150,000 came from. And we went so far as to ask
 3 the Rigsbys to produce check stubs from your client to
 4 confirm that. And we were very careful that there would be
 5 no incentive created by that relationship that didn't exist
 6 with their relationship with your organization.
 7 THE COURT: Well, wasn't there some overlap between
 8 the relationship you established with them and the
 9 relationship they had with Renfroe, so if they were making
 10 \$150,000 from Renfroe and they're making \$150,000 from you,
 11 there was some period of time when they were double dipping,
 12 would that be fair?
 13 THE WITNESS: No, I don't think so. My belief is
 14 that they were not double dipping.
 15 THE COURT: So there was a cut-off date, as you
 16 understood it, from their relationship with Renfroe and a
 17 beginning date, which was maybe the same date, but close to
 18 the same date that they began to consult with or be employed
 19 by you and your group. Is that how you understood it?
 20 THE WITNESS: That is how I understand it now. And
 21 then I haven't given it any thought before today as to how
 22 that was handled. But I think that -- My belief was, and is
 23 now, that they represent -- We did not start paying them this
 24 150,000 a year until after they had severed --
 25 THE COURT: Do you know whether you paid it on a

1 monthly basis?
 2 THE WITNESS: It's either monthly or weekly or
 3 biweekly or something of that order.
 4 THE COURT: And do you know whether you deducted
 5 from them each pay stub for unemployment compensation and
 6 Workers' Compensation and Social Security and anything like
 7 that?
 8 THE WITNESS: Judge, I don't know.
 9 THE COURT: Well, I don't know how important it is
 10 or might become to distinguish between an independent
 11 contractor and an employee. It may or may not be important.
 12 If you all think it's important, then we may have to develop
 13 some of this or get some more information because he's not
 14 his bookkeeper, and I can understand that.
 15 BY MR. HELD:
 16 Q. Are you aware of the fact that it was September of '06
 17 when the Rigsbys terminated their employment or their
 18 employment was terminated with Renfroe?
 19 A. I think that the Rigsbys advised Renfroe before that that
 20 they had cooperated with the United States attorney, the FBI,
 21 copied documents for the attorney general of the state.
 22 Perhaps congressional authorities were not there before that.
 23 And effectively terminated.
 24 BY MR. HELD:
 25 Q. All right. Before the attorney-client relationship was

1 established, did either of the Rigsby sisters call you and
 2 tell you that they had documents concerning the Katrina
 3 disaster?
 4 A. No.
 5 Q. Did you learn of those documents after the
 6 attorney-client relationship was established?
 7 A. Yes.
 8 Q. Is Don Barrett a member of the Scruggs Katrina Group?
 9 A. Yes. He and his firm, yes.
 10 Q. Do the Rigsby sisters work with all of the attorneys in
 11 the Scruggs Katrina Group?
 12 A. Principally --
 13 Q. Are they available to work with all of them?
 14 A. They are, but they have worked principally with me and my
 15 firm, that is, The Scruggs Law Firm, although other members
 16 of the Scruggs Katrina Group have talked to them
 17 occasionally.
 18 Q. Does the Scruggs Katrina Group share expenses, in other
 19 words, all of them contributing towards the salary or
 20 whatever you call it that's paid to the Rigsby sisters?
 21 A. Yes.
 22 Q. Does your scope of employment or scope of your
 23 relationship with the Rigsby sisters have anything to do with
 24 this lawsuit?
 25 A. I'm sorry. Would you ask that again?

1 Q. I guess the scope of your relationship, the
 2 attorney-client relationship with the Rigsby sisters, does it
 3 have anything to do with this lawsuit pending before Judge
 4 Acker?
 5 A. It seems that it does.
 6 Q. Is the Scruggs Katrina Group paying their attorney's
 7 fees?
 8 A. Yes.
 9 Q. Did the group -- when I say the group, the Scruggs
 10 Katrina Group -- locate counsel for them?
 11 A. Yes. Well, Mr. Barrett, as was testified earlier, did
 12 that.
 13 Q. Have you discussed with Don Barrett the fact that he
 14 spoke to Ms. Stanley about settlement of this pending lawsuit
 15 before Judge Acker?
 16 A. Well, only after the fact, and it varied materially from
 17 the way it was presented in your papers as a settlement
 18 because of the reasons that have been articulated by counsel
 19 here that --
 20 THE COURT: I didn't hear you, Mr. Scruggs.
 21 THE WITNESS: I'm sorry, Judge. Mr. Barrett's
 22 recollection of the conversation that counsel characterized
 23 it --
 24 THE COURT: So I'm getting it third hearsay?
 25 THE WITNESS: Must be.

1 Because I was not aware of it ahead of time. And only
 2 after the so-called criminal contempt thing was filed, was I
 3 really aware of it.
 4 BY MR. HELD:
 5 Q. All right. Well, did you write to State Farm's New York
 6 counsel and demand that they intervene in some way with this
 7 lawsuit and require Renfroe to dismiss it?
 8 MR. ROGERS: Your Honor, I object on the grounds of
 9 relevancy and to the extent it involves the settlement
 10 discussions with State Farm's counsel.
 11 THE COURT: Overruled.
 12 A. You bet I did, because it was part of it, and State Farm
 13 never denied that they effectively controlled Renfroe. And
 14 we were all under the impression when we entered into the
 15 resolution, the grand resolution, much of which has taken
 16 effect with State Farm, that State Farm would see to it,
 17 State Farm undertook and represented that that they would see
 18 to it that your client --
 19 THE COURT: Would that suggest that if Mr. Barrett
 20 used the word "settlement" or "proposed settlement" or using
 21 that term in the conversation with Ms. Stanley, that he was
 22 talking about this global settlement that's not yet
 23 eventuated?
 24 THE WITNESS: I have no doubt but what --
 25 THE COURT: And not just this narrow lawsuit?

1 Now, I want to offer a thought for what it's worth so
 2 that you all won't explore it unless you want to try to
 3 dissuade me from it. While I'm convinced to this point that
 4 Renfroe is a separate entity from State Farm, that doesn't
 5 mean that when it gets a lot of its, if not most of its,
 6 business with State Farm, is not subject to persuasion from
 7 State Farm.
 8 I mean, you know, I didn't fall off a turnip truck, so I
 9 understand power and the use of it. So if the parties and
 10 their lawyers, with this case pending, a separate case
 11 involving parties that are not State Farm, not the attorney
 12 general of Mississippi, not the general counsel of State
 13 Farm, but is involved in the mix, I can understand how
 14 somebody could think and believe and why it could be true
 15 that State Farm could tell your client, Renfroe, what to do.
 16 Now, Renfroe might say no and might be sorry too if it
 17 did. But all of that is just something for us to think
 18 about, but I don't know where it's going to get us.
 19 MR. HELD: I'm going to wind up right here on that
 20 point, Your Honor.
 21 BY MR. HELD:
 22 Q. Renfroe has not participated in one bit in this, whatever
 23 you want to call it, global settlement concerning Katrina;
 24 isn't that a fact?
 25 A. No one who represented Renfroe other than State Farm, not

1 denying --
 2 Q. Are you telling us that State Farm is representing
 3 Renfroe?
 4 A. I'm saying that they implied, and we inferred, that State
 5 Farm controlled Renfroe, because the ladies worked
 6 exclusively for State Farm for eight, nine years, and many
 7 other adjusters did too, or that worked for Renfroe, and it's
 8 just kind of a pass-through deal.
 9 Q. There are a number of other businesses similar to Renfroe
 10 that also provide services to State Farm and Nationwide and
 11 these other insurance companies; isn't that correct?
 12 A. I think there are about a half dozen and all of whom
 13 compete for State Farm's favorite, Renfroe being one of them.
 14 Q. And Renfroe was not the only supplier of adjusters to
 15 State Farm in the Katrina situation, was it?
 16 A. I don't know. I don't know of any others.
 17 Q. Okay.
 18 All right. Let's move on to the documents.
 19 A. I don't think that's the case.
 20 Q. You think State Farm supplied all of -- I mean Renfroe
 21 supplied all of State Farm's adjusters in Katrina?
 22 A. I think they did, but I don't know any different.
 23 Q. Okay.
 24 A. Sure.
 25 Q. But you do acknowledge that Renfroe was not represented

1 by counsel and had no input and was not involved in any way
 2 in any settlements between your Katrina group and State Farm?
 3 **A.** I would agree with the first two parts of that, but not
 4 the third.
 5 **Q.** In what way do you not agree with the third?
 6 **A.** That Renfroe was not influenced by those --
 7 THE COURT: Well, all he's saying is what I was
 8 saying, that State Farm probably has a fair amount of
 9 influence with Renfroe. And if we want to argue about that,
 10 I think we'd spend an unnecessary amount of time. I think
 11 that's a fact. What that implies for the purposes of this
 12 case, I'm not sure.

13 MR. HELD: Okay.

14 All right. Let's start with --

15 THE COURT: Let's take a 10-minute break,
 16 mid-afternoon break. I think we all deserve one.

17 (Recess from 3:02 p.m. to 3:13 p.m.)

18 RICHARD F. SCRUGGS

19 DIRECT EXAMINATION (resumed)

20 BY MR. HELD:

21 **Q.** Mr. Scruggs, before the break, I indicated that I would
 22 start with the documents, so I'll do that now.

23 The first, as we call them, batch that you received was
 24 in February of '06. And Ms. Rigsby testified it was about 20
 25 documents; is that correct?

1 **A.** That is correct.
 2 **Q.** Then, as I recall, she said she gave to you another 20 to
 3 50 documents but not all at one time. Am I correct about
 4 that?

5 THE COURT: Are you talking about is he correct
 6 about that's what she said or is she correct with what she
 7 said?

8 MR. HELD: Well, was she correct in what she said.

9 **A.** That is consistent with my recollection.

10 BY MR. HELD:

11 **Q.** And then in June of 2006 she brought to you a large
 12 number of documents; is that correct?

13 **A.** I want to say it was later than that, like July maybe.

14 In terms of the dump, I mean the data dump, is that what you
 15 are talking about?

16 **Q.** Yes.

17 **A.** That was significantly after that, after June, I think.

18 **Q.** After June?

19 THE COURT: Significantly after June?

20 THE WITNESS: It would seem like it was in July,
 21 late July, or maybe even August.

22 BY MR. HELD:

23 **Q.** The first documents that she brought, 20, in February,
 24 were they brought in a file? How were they delivered to you?

25 Were they in a regular file or just loose?

1 **A.** Loose.

2 **Q.** And the second group, how were they delivered?

3 **A.** Over time, loose.

4 **Q.** And then the third group, the data dump, they were

5 brought at one time?

6 **A.** I think that's correct. I don't think they were brought

7 in a single box, although we kept them in a box different

8 from that. That's what was --

9 **Q.** Did they fit in one storage box?

10 THE COURT: And the witness is pointing to two boxes

11 on the floor.

12 BY MR. HELD:

13 **Q.** You said that they were in a box. In one box? I'm

14 sorry. I didn't understand you.

15 **A.** No. There were two boxes. One was full. They weren't

16 that large, and one was partially full.

17 THE COURT: When you say large, are you talking

18 about in height or in a piece of paper like the one I'm

19 holding now, which is letter size? Were the documents all

20 letter size once copied or were there some larger than letter

21 size, or do you know?

22 THE WITNESS: Your Honor, I think they were all that

23 way, but I did not go through them in detail and organize

24 them. And they weren't organized. They were just kept in

25 the same way we got them, but I think put into a different

1 box in our office.

2 BY MR. HELD:

3 **Q.** All right. And then there was --

4 THE COURT: They were in two boxes, but one box, no

5 matter how deep it was and how high it was, was full and the

6 other one not full?

7 THE WITNESS: That's correct. And they were about

8 the size of what the court demonstrated, which were

9 typical --

10 THE COURT: Most of them letter size?

11 THE WITNESS: Sure. You make copies on, stick in

12 your copy machine.

13 BY MR. HELD:

14 **Q.** Well, let me show you these two boxes.

15 THE COURT: Watch your back, Jack.

16 MR. HELD: Yeah. Rushton said he hurt his back when

17 he was bringing them in.

18 BY MR. HELD:

19 **Q.** These on the floor are the two boxes that were delivered

20 to us by defendants' counsel, and pictures of those are

21 attached to one of the exhibits that has been introduced.

22 Did the one box filled and the box that was partially filled

23 with documents, do you think they would fit into those two

24 boxes, or would there be room for more or less?

25 **A.** I'm quite sure there would be room for less. They

1 were -- I don't know where those boxes came from. They could
2 have been sent from my Moss Point office, I think, on like
3 December 12th.

4 THE COURT: But what you are saying is that when
5 they were delivered by the Rigsbys, they were not in those
6 two boxes?

7 THE WITNESS: That's correct, they were not. And
8 I'm thinking they were not in any boxes, but that's just a
9 vague recollection. They were in our office in Moss Point,
10 which is the only office we have besides the one in Oxford.
11 Put them in smaller boxes, narrower boxes, which would not to
12 my eye contain that, but they were -- there were no lids on
13 them, and perhaps my assistant down there put them in boxes
14 like that to ship them to the attorney general. I just don't
15 know.

16 BY MR. HELD:

17 Q. All right. The fourth delivery was in fall 2006
18 according to Ms. Rigsby. Do you agree with that?

19 A. I think they -- I'm not sure if they were given to us or
20 to -- In fall of 2006?

21 Q. That's what Ms. Rigsby testified to.

22 THE COURT: The dump, the boxes, the big box or
23 boxes were somewhere July, August, and now he's talking about
24 later in the fall.

25 MR. HELD: Correct.

1 THE COURT: There was some testimony about a
2 delivery, and I can't remember the number of documents that
3 were referred to there, but do you recall that?

4 MR. HELD: She said in the fall of '06.

5 THE WITNESS: Mr. Held, I only generally -- Your
6 Honor, generally recall that. But I don't know what they
7 contained.

8 BY MR. HELD:

9 Q. All right. What did you do with the first batch, the 20
10 documents that you received in February of '06? Did you make
11 an accounting of them?

12 A. I'm sorry?

13 Q. Did you --

14 MR. HAWLEY: Your Honor, I think what he did with
15 the documents, that's under privilege. And the fact that he
16 received a certain number of pages, Jack refers to 20
17 documents. I heard 20 pages. That he received them is one
18 thing.

19 THE COURT: Well, you know, there is maybe some
20 argument or some difference of opinion about a number of
21 documents as contrasted with a number of pages, because some
22 of the documents offered or some of the exhibits are more
23 than one page.

24 MR. HELD: I do stand corrected. Looking at my
25 notes, she said 20 pages.

1 MR. HAWLEY: Your Honor, but my objection goes to
2 the privilege of it, just by clarification.

3 THE COURT: Well, I don't know, what would be the
4 relevance? Do you make a relevance objection too?

5 MR. HAWLEY: Your Honor, I do.

6 THE COURT: All right. What is the relevance of
7 what he did with them?

8 MR. HELD: I want to account for them. Are they
9 floating around with people in the Katrina group, with this
10 mystery lawyer? Your injunction said to turn them all over
11 and not to use them.

12 THE COURT: Well, of course, this is before the
13 injunction, true. And I'm afraid one of these days, I don't
14 know how soon, maybe one of these minutes like we're going to
15 get into what constitutes use, because you could argue, and
16 you may be getting ready to argue, that if, for instance, he
17 answered your question or I made him answer your question and
18 he said he gave it to a lawyer in Louisiana, and then after
19 the injunction he was unsuccessful in trying or he didn't
20 try --

21 MR. HELD: That's my point.

22 THE COURT: -- to get the document back from the
23 lawyer in Louisiana as he used it. And I'm afraid that's
24 where we're headed a little bit. But within limits, I'm
25 going to let you explore what he did with them. He's not

1 going to remember what every -- And he has more than one
2 lawyer in his office and probably more than one paralegal and
3 one or more secretaries.

4 MR. HELD: Only testing his knowledge.

5 THE COURT: Just within his knowledge and his
6 recollection, what he did with it might get us somewhere.
7 And I'll overrule on that basis. We'll see. I'm not saying
8 don't renew the objection if he goes too far with it.

9 THE WITNESS: And, again, for the privilege issues,
10 I'm instructed by the court to answer?

11 THE COURT: I am instructing you. Go ahead.

12 THE WITNESS: Yes, sir.

13 A. I know of no lawyer in Louisiana that was --

14 THE COURT: Well, I have a bad habit of
15 hypothesizing unnecessarily and unreasonably. Go ahead.

16 A. I seem generally to remember sharing the documents with
17 lawyers who were not affiliated with us in any manner other
18 than what trial lawyers do in terms of sharing information
19 before your injunction. One lawyer who has lit up, for lack
20 of a better term, State Farm, and your client in Oklahoma,
21 Jeff Morrow, and another one named Flip Phillips, who has an
22 entirely different group of cases and is not part of our
23 team, but I'm not positive we did, but those are the only
24 ones that I recall having ever shared them with.

25 Now, I will say that the 20 that your question referred

1 to, some of those are attached to the -- they dealt with,
2 part of them, in fact most of them, dealt with the McIntosh
3 family.

4 MR. HAWLEY: Your Honor, I want to extend my
5 objection to cover the use of these documents in other
6 lawsuits where other clients may have the same privilege as
7 my client has had with respect to the origin of the
8 documents.

9 THE COURT: Well, he asked me, and I think
10 implicitly you did, to override his privilege for the
11 purposes of this case although that has some question in my
12 mind as to how far to override that, because I don't frankly
13 see how his revealing this could hurt in any way his
14 attorney-client relationship or the outcome in the case like
15 the McIntosh case as it's been described.

16 Now, it's pretty obvious, I think, by now that some of
17 the 20 documents in the first wave and some of the 30 to 50
18 or 20 to 50 in the second wave and some of the 5,000 in the
19 third wave, maybe some of the others, have been shared within
20 the Katrina group and beyond that because lawyers
21 communicate, that what the obligation is, if any, to recover
22 documents and to not allow them to be used in pending cases
23 that are already pending, already underway before the
24 injunction, which says don't use them, that's dangerous. I
25 mean that's crazy to try to implement that.

1 To the extent I can enforce that, I'm going to enforce it
2 because I put those words down there, and I intended for them
3 to be obeyed. I didn't put them down there for fun. But how
4 somebody goes about complying under these strange set of
5 circumstances is a question that you all have got to help me
6 answer eventually.

7 MR. HELD: Well, first of all, I just wanted to see
8 where they are.

9 THE COURT: Well, he's told you two instances of
10 where they may be. And he doesn't know whether they're there
11 or not.

12 THE WITNESS: Outside of -- I'm sorry.

13 THE COURT: Excuse me. I've finished. Go ahead.

14 THE WITNESS: Outside of our sphere of influence, my
15 sphere of influence. And other than the lawyer in Oklahoma
16 who had been litigating with State Farm and Renfroe --

17 THE COURT: But in the Katrina group --

18 THE WITNESS: -- for many, many years.

19 THE COURT: -- you are the lead lawyer?

20 THE WITNESS: In the Katrina group, I am.

21 THE COURT: Yeah.

22 BY MR. HELD:

23 Q. And did any of these 20 pages go to other lawyers in the
24 Scruggs Katrina Group?

25 A. Yes, indeed. Most of them to my recollection are part of

1 the McIntosh case file before the federal court in
2 Mississippi, which came about after the 20/20 piece aired.

3 Q. All right. Well, are all these 20 pages concerning
4 McIntosh from the first group?

5 A. Most of them. I can't say without looking that they all
6 were, but most of them were. They were the double
7 engineering reports with the sticky note that you referred
8 to.

9 Q. Did you inventory the documents, make a schedule of them
10 like we, you know, like we make up our exhibit list?

11 A. No, sir. In fact, they are part of our file on State
12 Farm, Renfroe and the others that were routinely employed and
13 sent out by State Farm in disaster issues. But they were not
14 inventoried per se, no, sir, not by anybody that I know of.

15 Q. Have you recovered all of those that are not affixed to
16 pleadings in the McIntosh case?

17 A. Affixed to pleadings? We did our best to, and they are
18 because it's like them ringing a bell, people are showing up
19 with them. That's the group you got this morning. We found
20 out about Friday that another member of the Scruggs Katrina
21 Group had that we had asked them for them long ago and they
22 didn't think they had any. I didn't think they had any.
23 They discovered them just perhaps accidentally, and gave them
24 back to us, and we gave them back to you this morning. But,
25 I mean, the others that have been -- trickled in have shown

1 up in that regard in the same manner.

2 Q. Okay. And on the 20 to 50 pages that trickled in from
3 the Rigsbys around April of '06, did you inventory those
4 documents?

5 A. I never inventory any documents.

6 Q. Did anybody in your firm do that?

7 A. No.

8 Q. What did you do with those 20 to 50 pages?

9 MR. HAWLEY: Your Honor, again, the same
10 attorney-client privilege objection.

11 THE COURT: The same ruling. And you are instructed
12 to respond.

13 A. Other than share them after that time with the law
14 enforcement officials, that is, the FBI and others, the
15 attorney general, the DOJ, and the local U. S. attorney, and
16 the congressional delegation that was investigating this, and
17 the other main use I remember of those 20, if that's what
18 your question was --

19 BY MR. HELD:

20 Q. The 20 to 50 Ms. Rigsby said.

21 A. In the second --

22 Q. The second batch.

23 A. I don't -- Other than turning them over to the FBI and to
24 the attorney general and --

25 THE COURT: Well, did your firm make copies of them

1 to turn over to the FBI so that you had a copy and the FBI
 2 had a copy? Did you make a copy for the attorney general,
 3 retain a copy, give them a copy?
 4 THE WITNESS: Yes, sir, Judge.
 5 THE COURT: Or did you give him --
 6 THE WITNESS: Yes, sir, I did. But there was a
 7 great deal of duplication, if I might interrupt the court, if
 8 not total duplication, of the documents that were in the dump
 9 with those documents.
 10 THE COURT: The testimony that you heard from Ms.
 11 Rigsby was that as far as the dumped documents, she had three
 12 sets, three duplicate sets, of all of them, and you got one
 13 of them. Did she deliver the other copies to the attorney
 14 general and the U. S. attorney or did you?
 15 THE WITNESS: I did not.
 16 THE COURT: And nobody in your office did to your
 17 knowledge?
 18 THE WITNESS: That's correct.
 19 THE COURT: Now, what about --
 20 THE WITNESS: We didn't have them at the time.
 21 THE COURT: Well, okay. I understand you. So at
 22 the time you got yours, Ms. Rigsby had already, as far as
 23 your understanding, delivered a duplicate copy to both the
 24 attorney general of Mississippi and the U. S. attorney or the
 25 FBI. That was your understanding?

1 THE WITNESS: I think that all three copies --
 2 batches, if you will, were delivered that were identical, but
 3 I don't know. I haven't tried to compare them because I
 4 don't have access --
 5 THE COURT: Well, that's just what she says.
 6 THE WITNESS: Yes.
 7 THE COURT: So we're assuming that for the sake of
 8 the question.
 9 THE WITNESS: I think that's correct, but I didn't
 10 get our copy until later.
 11 THE COURT: Well, I'm trying to get who she
 12 delivered them to and in what sequence. Did she hold them in
 13 her house and invite you to come and the U. S. attorney to
 14 come and the Mississippi attorney general to come, send a
 15 representative, so all of you got there and precisely at the
 16 same time, each grabbed your box and left? Now, that's one
 17 way to deliver all three at one time.
 18 THE WITNESS: No, Your Honor.
 19 THE COURT: But did she deliver all three to you and
 20 then you delivered to the others? That's my question.
 21 THE WITNESS: I had nothing to do until shortly
 22 after your injunction with the delivery of those documents to
 23 the attorney general or any other law enforcement official.
 24 THE COURT: Well, now, for the first time you
 25 mentioned a congressional investigation just a minute ago.

1 That was the first time that's been mentioned in any of my
 2 papers or anything that I've seen or heard. Did you or Ms.
 3 Rigsby or anybody else deliver a separate set or a portion of
 4 any of these sets to any congressional delegation or
 5 investigators, which would suggest that there might be still
 6 some out there bouncing around Washington D.C., to me? Do
 7 you know?
 8 THE WITNESS: Before characterizations that have
 9 been put on the board, batches, so to speak, some of those,
 10 but not the boxes by Mr. Held that were shared with
 11 congressional investigators, yes, but long before any
 12 injunction or anything.
 13 THE COURT: Okay. I understand that. But were
 14 shared by whom, you or Ms. Rigsby or one of the Rigsby girls,
 15 ladies?
 16 THE WITNESS: Both.
 17 THE COURT: Both?
 18 Just another rabbit hole to go down.
 19 THE WITNESS: Sorry.
 20 BY MR. HELD:
 21 Q. Did you make copies of any documents and give to the
 22 congressional group or anyone in your Scruggs Katrina Group
 23 do that?
 24 A. My recollection is that the first group of documents in
 25 late February, when I first met with the Rigsby ladies about

1 this, were the ones that I delivered to the congressional
 2 delegation.
 3 Q. Okay. So that's another group that got the documents,
 4 the congressional group. And then you said several people in
 5 the Katrina group. You brought copies, and they were
 6 distributed around to members of the Scruggs Katrina Group?
 7 A. Not the documents.
 8 Q. No. Not talking about the 5,000 or 8,000, whatever it
 9 is.
 10 A. Right. No. Although they are duplicative of many, if
 11 not all, of the first two groups. They were not -- They were
 12 shared because of the McIntosh issue primarily, and the
 13 McIntoshes contacted us after the 20/20 piece because they
 14 didn't know and had been told by State Farm and State Farm's
 15 lawyers that there wasn't an earlier report that said wind.
 16 It was only the later report that copied twice that said
 17 water.
 18 THE COURT: Well, this is your first visit to this
 19 courtroom, so you may or may not know that I have heard the
 20 20/20 report mentioned before. But I have, and you could
 21 figure that out.
 22 THE WITNESS: Yes, sir.
 23 THE COURT: Earlier you said that you understood
 24 that the Rigsbys had somehow informed or that Renfroe, that
 25 Renfroe had learned that their employees or former employees

1 or employees, the Rigsbys, which is what they were at that
 2 time, were cooperating with law enforcement or with you or
 3 had otherwise done something which Renfroe turns out to have
 4 been unhappy with. And we all know that there was at some
 5 point a disassociation. Who fired whom maybe is another
 6 question.

7 Are you saying that the facts could lead me to conclude
 8 that it was not until the 20/20 event that Renfroe knew that
 9 the Rigsbys had done what it turns out they did, because we
 10 may --

11 THE WITNESS: No. I think it was long before that.

12 THE COURT: -- we can know that precise date of the
 13 20/20 event. We might know that.

14 THE WITNESS: My understanding is that the Rigsbys
 15 informed State Farm that they had cooperated with federal and
 16 state law enforcement officials in June.

17 THE COURT: Well, you relayed to State Farm and
 18 Renfroe, and I relayed them too because Renfroe worked for
 19 State Farm as an independent contractor. But it's not
 20 necessarily true, it might be a logical inference, that if
 21 the Rigsbys told State Farm that they were cooperating, that
 22 Renfroe would have learned it that way. That's a possible
 23 argument that could be made, arguably.

24 But it doesn't follow as night follows day. If night
 25 follows day though that if they went on 20/20 and the whole

1 world saw it, then Renfroe saw it. I'm going to make that
 2 deduction with you as a logical, ineluctable deduction.

3 So I don't know exactly when Renfroe knew about it, for
 4 whatever that means to us.

5 THE WITNESS: Nor do I.

6 MS. STANLEY: Your Honor, I believe Jana Renfroe
 7 testified during the preliminary injunction hearing that
 8 Renfroe learned about what the Rigsby women had done from the
 9 20/20 program.

10 THE COURT: Well, that's what my recollection is
 11 that she testified to. But, you know, people can recall
 12 things differently or they can be wrong.

13 You may proceed.

14 MR. HELD: All right, sir.

15 THE WITNESS: I have a hard time with that, quite
 16 frankly.

17 BY MR. HELD:

18 Q. Mr. Scruggs, I'm just trying to track down the scope, the
 19 broad list of people that got copies. I'm not saying it's
 20 right or wrong at the time before the injunction was issued.
 21 I'm just trying to find out where they went.

22 Just to summarize, you told me that on the first 20 pages
 23 they went to several attorneys in the Scruggs group and they
 24 went to this congressional investigating committee. Did they
 25 go to anyone else?

1 A. They went to the United States District Court to the
 2 Southern District of Mississippi as part of the McIntosh
 3 case.

4 Q. Okay. Anyone else that you -- any other groups that you
 5 know of that got copies of those first 20 pages?

6 A. No one -- And again, I have not tried to compare them,
 7 inventory them, or anything like that. My belief though is
 8 that, without having looked at it, that they are duplicative,
 9 the first 20 in the second group are duplicative with what's
 10 in the third group. The fourth group, I think, is slightly
 11 different.

12 Q. Okay.

13 But the second group contained documents that were not in
 14 the first group; isn't that correct?

15 THE COURT: Well, if there were more documents in
 16 the first group, that might --

17 MR. HELD: Had to be.

18 A. I don't know the answer to that.

19 BY MR. HELD:

20 Q. Well, as the judge pointed out, the testimony was that
 21 there were about 20 pages in the first group and 20 to 50 in
 22 the second. So what is your recollection as to what happened
 23 or who got copies of the 20 to 50 pages in the second group?

24 A. Other than perhaps members of the Scruggs Katrina Group,
 25 and what might have been filed in connection with the

1 McIntosh case or duplicative in the third group that you
 2 mentioned, I don't know.

3 THE COURT: Was your firm in the McIntosh case, or
 4 is it?

5 THE WITNESS: We represent the McIntosh family, but
 6 only after the 20/20 piece aired, and they contacted us the
 7 next day.

8 THE COURT: I won't go any further.

9 THE WITNESS: I'm sorry. We had no relationship. I
 10 had never met them before that.

11 BY MR. HELD:

12 Q. Now, some of these documents that have been presented to
 13 us recently, like today, and then the end of February, those
 14 documents were in the hands of lawyers not in the Scruggs
 15 Katrina Group, weren't they?

16 A. You know, I don't, I don't know what -- I'm sorry. If
 17 you mean DOJ lawyers and attorney general lawyers or
 18 congressional lawyers?

19 Q. No. I'm not talking about attorney general or the U. S.
 20 attorney. I'll just read -- I believe both of these are in
 21 evidence -- Plaintiff's Exhibit 14, February 6th letter from
 22 Bruce Rogers to me. And the second paragraph says, "In
 23 connection with delivery of the documents last week, please
 24 find enclosed five computer discs I obtained on which such
 25 documents were stored. These discs were given to our client

1 from a lawyer that is not a part of the Scruggs Katrina
2 Group...."
3 **A.** I see where you are going with that, and you are correct.
4 There is a law firm that was, I think Ms. Rigsby referred to
5 it this morning, that got some or all of these documents. I
6 can't recall exactly. I don't think I ever knew what they
7 got. They were part of a different undertaking besides
8 Scruggs --

9 THE COURT: It would take that lawyer or somebody in
10 that lawyer's office to tell me whether that's the computer
11 disk -- where he got the computer disk, and what he did with
12 it from that point to the time he delivered it to whoever
13 delivered it to Mr. Rogers so he could deliver it to Mr.
14 Held. So there's a time frame in there when we don't know
15 who all had access to it and who could have copied it.

16 BY MR. HELD:

17 **Q.** But how did this unknown lawyer get the documents and
18 make these five computer disks?

19 THE COURT: If you know.

20 THE WITNESS: I know, and I don't know if that, if
21 that --

22 THE COURT: Five computer disks, I don't know how
23 many things you could put on them. I think there are
24 different qualities and size computer disks, I think. But I
25 don't know how many pieces of information or pages could go

1 on a computer disk, or that particular one. But it would
2 suggest that if you have five, it has more than 20 documents
3 on it. That would suggest that, which leads me to ask this
4 question:

5 In communicating as the lead question within the Katrina
6 group, did you share this information, which lawyers share
7 within groups? I'm not saying you couldn't or shouldn't
8 right now. I'm just saying when somebody joins your group,
9 they join it for a reason. They wanted information that was
10 commonly needed in the litigation. That makes all the sense
11 in the world. How did you communicate it? Did you put it on
12 a disk and give each of them a disk?

13 THE WITNESS: No.

14 THE COURT: Or did you box all the papers up and run
15 them off of a machine 10 or 15 times, however many you
16 needed, and mail them to them? I mean, that's what I want to
17 know.

18 THE WITNESS: Neither. We neither copied them
19 electronically on disk, or at least our firm and our SKG
20 group did not to my knowledge or make any other copies of the
21 third group of documents and share them with anyone. They
22 were delivered to the attorney general pretty much in the way
23 they were delivered to us. If that's the point. The first
24 20, a good many of them were shared within the Scruggs
25 Katrina Group. Perhaps some --

1 THE COURT: So if somebody else in the Katrina
2 group, let's say, files a lawsuit tomorrow and uses as an
3 exhibit or as an information source one of the 5,000
4 documents in the dump that were not in the 20 and not in the
5 30 or the 50, where would you think that lawyer would have
6 gotten them?

7 THE WITNESS: I have no knowledge of how they would
8 have gotten those and no reason to guess.

9 BY MR. HELD:

10 **Q.** Well, this lawyer that is not part of the Scruggs Katrina
11 Group that we've got documents on two occasions, February 1st
12 and then February 6th, and then I think again today, that
13 were with the lawyer not associated with the Scruggs Katrina
14 Group, for what purpose were they given to that lawyer not
15 associated with the group?

16 **A.** Mr. Held, given the fact that you have talked about
17 several different groups of documents, the ones that I'm
18 aware of that were shared within the Scruggs Katrina Group
19 are also contained in the documents that were returned.
20 Certainly, we have no documents in our office or in our
21 spaces, and we've made an effort to get the Scruggs Katrina
22 Group to return them. And the documents that were referred
23 to in your amended -- I'm not sure if that's the right
24 term -- contempt motion, that is, Renfroe's, came from a law
25 firm that was not part of the Scruggs Katrina Group, but

1 which we are cocounsel with on behalf of the Rigsbys and in a
2 matter that I am under the federal penalty statute that the
3 federal court orders us not to discuss.

4 **Q.** Well, the group with Plaintiff's Exhibit 12, which is the
5 February 1 letter, 2007, that contained this large expandable
6 file with four stacks of papers with rubber bands on them.

7 **A.** I'm sorry?

8 **Q.** I beg your pardon?

9 **A.** Would you ask that again?

10 **Q.** I was making a statement. It wasn't a question yet. I
11 said this February 1 letter accompanied this big file that's
12 on the corner of the desk here. It must be 10 inches thick
13 of documents. Do you see it?

14 **A.** I do see it.

15 THE COURT: I think we could argue about that. I
16 think it's about eight and a half inches.

17 (Laughter.)

18 MR. HELD: I'll accept that.

19 **A.** And if this is the letter of February of this year, that
20 is, 2007, that came along with the five disks; is that
21 correct?

22 BY MR. HELD:

23 **Q.** No.

24 **A.** I'm sorry.

25 **Q.** This came on February the 1st.

1 And may I approach, Judge?
 2 THE COURT: You may.
 3 BY MR. HELD:
 4 Q. Here's the Plaintiff's Exhibit 12 that I was kind of
 5 reading.
 6 A. (Witness reading.)
 7 I see it.
 8 Q. And then here, Plaintiff's Exhibit 14, is a letter of
 9 February 6, 2007, which sent the five disks. You might want
 10 to take just a little look at that.
 11 A. (Witness complying.)
 12 Q. So they did not come at the same time. And I ask the
 13 question then, did they all come from the same source?
 14 A. It's my belief they did.
 15 Q. And do you know whether that source has any more
 16 documents?
 17 A. No. They are not part of the Scruggs Katrina Group or
 18 our firm, although they are our cocounsel in the case I just
 19 mentioned that I am under another federal judge's order not
 20 to discuss nor -- and a federal statute.
 21 MR. HELD: Do we not go there?
 22 THE COURT: Well, the -- I think not.
 23 MR. HELD: Okay.
 24 BY MR. HELD:
 25 Q. Then this morning some documents were delivered to us. I

1 think it was 15. No. 16. I'm sorry.
 2 THE COURT: Don't get away with my original.
 3 MR. HELD: All right.
 4 A. There is one omission in these two letters.
 5 BY MR. HELD:
 6 Q. Yes, sir.
 7 A. And that is, that we no longer hire lawyers from the Yale
 8 Law School.
 9 (Laughter.)
 10 Q. From where?
 11 A. From the Yale Law School.
 12 THE COURT: I've got a Notre Damer over here and a
 13 Harvard. I'm on your page there.
 14 (Laughter.)
 15 BY MR. HELD:
 16 Q. Let me show you Plaintiff's Exhibit 16. And when you
 17 finish with it, please hand it to the judge. That's the only
 18 one.
 19 Now, that was delivered to us today with some additional
 20 documents. Do you know where they came from?
 21 A. I think so.
 22 Q. Tell us.
 23 A. I think they came -- were discovered late last week. A
 24 member of the Scruggs Katrina Group inadvertently after they
 25 had been asked, the (inaudible) law firm, after they had been

1 asked if they had any such documents, and our belief was that
 2 they didn't --
 3 THE COURT REPORTER: I'm sorry. I'm having trouble.
 4 What law firm?
 5 THE WITNESS: I'm so sorry. The Nutt, N-u-t-t, Law
 6 Firm in Jackson, Mississippi, which is part, and always has
 7 been, of the Scruggs Katrina Group.
 8 THE COURT: Does the Scruggs Katrina Group, which
 9 has an entity status separate from its component law firms,
 10 jointly represent all of the individuals who are hired by
 11 originally one of the law firms that is within the Katrina
 12 group? In other words, does the understanding by which the
 13 Katrina group came into being contemplate that once you are
 14 in the Katrina group, all members of it will share the
 15 representation of all parties being represented?
 16 THE WITNESS: That's correct. And I omitted to
 17 mention because it just occurred to me. That is correct,
 18 Your Honor.
 19 Another law firm --
 20 THE COURT: You say one law firm has withdrawn or is
 21 no longer in it. But have any joined it --
 22 THE WITNESS: No.
 23 THE COURT: -- after its formation?
 24 THE WITNESS: No. But there was another law firm
 25 that associated with the Scruggs Katrina Group, but it's a

1 separate law firm under a separate arrangement.
 2 THE COURT: So a separate law firm could associate
 3 one of the members of that Katrina group. But if he does
 4 that, he's associated the Katrina group whether he intended
 5 to or not by the terms of the undertaking?
 6 THE WITNESS: That's correct.
 7 BY MR. HELD:
 8 Q. Mr. Scruggs, if I understood your testimony, and tell me
 9 if this is correct, the Rigsby ladies gave to you a set of
 10 the data dump, a set to the attorney general of Mississippi,
 11 and a set to the FBI, the U. S. attorney. And the judge
 12 asked if that was done simultaneously, and I think you said
 13 no; is that correct?
 14 A. That is correct, if you mean the third batch, the third
 15 data -- You characterized four data dumps, and you said the
 16 data dump.
 17 Q. The big data dump, the third one.
 18 A. The one that I believe, having not looked at them, is
 19 represented by those two boxes in front of you.
 20 Q. Did you advise the Rigsby ladies to turn those over to
 21 the FBI and the Mississippi attorney general?
 22 MR. HAWLEY: Objection, Your Honor.
 23 MR. ROGERS: That goes right at the
 24 privilege discussion.
 25 THE COURT: Well, this gets back to the undertaking

1 in the representation because he said it was uninterrupted
 2 and that he had an attorney-client relationship that started
 3 it in February of 2006 and continues to this day. But he has
 4 a separate relationship too as a consultant for the Katrina
 5 group. In which capacity this question is being asked of him
 6 is, I guess, the core question to be answered before letting
 7 him answer it or telling him he doesn't have to answer it.

8 MR. HELD: Well, Judge, the reason I asked that is
 9 on Page 6 of the Rigsby answer it says defendants admit that
 10 upon advice of counsel, they provided certain documents to
 11 the FBI and the Mississippi attorney general.

12 THE COURT: Well, then, I don't know that that would
 13 be admissible against this target of a contempt question.

14 But it leaves it to the extent it makes any difference. I
 15 think they would have conceded that by their pleading. But
 16 whether that helps them or hurts them is another question.

17 MR. HELD: Well, I just wanted to see if there was a
 18 dispute between the testimony.

19 THE COURT: But the fact that they assert that, they
 20 may be asserting it only because it's a fact and may be
 21 asserting it because it's a fact or they think it's a fact
 22 that they recall and that it has significance in their favor.
 23 I don't know. But they've said it. Now I think they are
 24 stuck with it.

25 MR. HELD: Okay.

1 THE COURT: Now, what effect it has on him is
 2 another question because he's not stuck with what they admit.

3 MR. HELD: Yeah, but if they opened the door.

4 THE COURT: Well, they might be. He might be.

5 MR. HAWLEY: Your Honor, the objection is based on
 6 the privilege. It also seems not to be relevant because of
 7 the law enforcement carve-out that your injunction
 8 specifically contemplates. I think we went over this in Cori
 9 Rigsby's testimony, and she stated very clearly whose idea
 10 the data dump was.

11 Now, Mr. Scruggs has also stated clearly earlier today
 12 that certain documents from the first batch or the second
 13 batch or both he gave to law enforcement authorities and
 14 perhaps even to congressional investigators.

15 THE COURT: Well --

16 MR. HAWLEY: Well, it was in our pleading in terms
 17 of those documents in batch one and batch two --

18 THE COURT: I'm going to sustain the objection to
 19 that. There's enough iffiness to its relevance to leave it
 20 out. I think that whatever the Rigsbys said in their
 21 pleading is in for my use and your use to the extent you
 22 think it's useable.

23 MR. HELD: Well, I though it was useful as far as
 24 credibility. They said yes and he said no.

25 THE COURT: Well, I won't let him say, so we won't

1 find out.

2 MR. HELD: I know. You keep us in suspense.

3 BY MR. HELD:

4 Q. Did you disseminate among anyone any of the documents
 5 from batch three, the two boxes? Now, you've told us, I
 6 believe, that on batch one you told us who you gave them to.

7 Batch two, tell us -- I'm sorry. I don't have it on the tip
 8 of my tongue -- where did batch two go, who got copies?

9 A. I don't know. Unless the Scruggs Katrina Group different
 10 of the lawyers that are in that group and the law firm that I
 11 mentioned that had associated our group, in their cases, they
 12 have had access to them. I don't know to what extent they
 13 availed themselves of that.

14 Q. Are you familiar with the disks that we're talking about
 15 the electronic copying? Here are five disks. I mean these
 16 disks, isn't it a fact, hold a lot more than 20, each one a
 17 lot more than 20 pages?

18 THE COURT: Or can hold.

19 MR. HELD: Sir?

20 THE COURT: Or can hold. You can put one sentence
 21 on one and the rest would be blank, I think you could.

22 MR. HELD: Yes.

23 BY MR. HELD:

24 Q. These could hold a lot more than 20 pages each, couldn't
 25 they?

1 A. I am no more computer literate than --

2 THE COURT: Than Judge Acker.

3 A. -- than Judge Acker. That's a reasonable inference, but
 4 I don't know that.

5 Q. Okay.

6 Do you know whether the documents in batch three were put
 7 on disks?

8 A. No.

9 Q. Do you know whether they were copied by anyone at your
 10 office, or any part of --

11 THE COURT: That means photocopied?

12 MR. HELD: Photocopied, yes. I'm sorry.

13 A. I don't think they were, not to my knowledge, not at my
 14 direction.

15 Q. Were they disseminated to any members of the Katrina
 16 group?

17 A. No.

18 Q. Were they disseminated to --

19 THE COURT: Let's take the word "disseminate" for a
 20 minute. That implies, I think, or could be understood to
 21 mean sent out to disseminate it. There's a difference
 22 between that meaning and available to. If I had a set of
 23 documents in my office in there, I might not send it to
 24 anybody, but I might let one or more persons know that if he
 25 or she came to my office, I would let them look at it.

1 And you've got a group. Did you tell the group, any or
2 all of it, that members of it had access to those boxes and
3 could come and look at them if they chose to, if they thought
4 they knew or could use it. Did you do that?

5 THE WITNESS: I advised the group, Your Honor, that
6 the documents were there, but I have no knowledge that they
7 were --

8 THE COURT: So you don't know whether the members of
9 the group came into your office where the documents were and
10 took a look to see what they could come up with? You don't
11 know?

12 THE WITNESS: I know where the documents were in the
13 office, generally.

14 THE COURT: Well, they weren't under lock and key so
15 that somebody had to have some kind of password to get a
16 membership card to get in there and get access to them, do
17 you? I mean you're not telling me that, or are you?

18 THE WITNESS: There was no -- I mean there was an
19 entry code to go in there. And our staff would be vigilant
20 about who came in that office, and certainly somebody that
21 would go look through documents, but --

22 THE COURT: Well, if I were a member of the Katrina
23 group and had more or less paid my dues, what was required of
24 me as a member, and one member of the group, particularly
25 lead counsel, had documents that were relevant to matters

1 that I was working on in conjunction with the group, I would
2 feel invited or at least permitted to look at documents that
3 a member of the group, the lead counsel, had. Wouldn't you
4 figure that?

5 THE WITNESS: I would. I just don't think they --

6 THE COURT: You just don't think they availed
7 themselves of that?

8 THE WITNESS: Not to any extent, if they did at all.

9 BY MR. HELD:

10 Q. All right. And did I understand you to say that you did
11 not copy any of those or no one in the group copied any of
12 these?

13 THE COURT: Not to his knowledge, he said.

14 A. That's correct.

15 BY MR. HELD:

16 Q. Do you know who made these disks that were in the hands
17 of the mystery lawyer, outside lawyer?

18 A. I wouldn't characterize him as a mystery lawyer.

19 Q. Well, however you -- He's a mystery to me.

20 A. Well, perhaps there's a legal reason for that.

21 THE COURT: A lawyer who is not a member of the
22 Scruggs Katrina Group, but who exists, that had something on
23 them that you haven't copied and looked at and I haven't
24 either.

25 A. Because I've talked to one or two of them, my belief is

1 that the U. S. attorney and FBI, if not the attorney general,
2 had shared the documents --

3 THE COURT: Well, that was getting ready to be my
4 next question.

5 A. -- yeah, with the congressional people.

6 THE COURT: I was getting ready, but you got ahead
7 of me there. We've already got a complicated case. But we
8 have, as Mr. Hawley says, a carve-out in the injunction,
9 which permitted anybody who was under the injunction, excuse
10 that person from responding to a law enforcement officer's
11 authorized request not -- which I think prevented an approach
12 by one of the enjoined persons, my interpretation, to law
13 enforcement, offering information. I think that's prohibited
14 by the injunction. But responding to a request from law
15 enforcement.

16 And I don't know about the Congress. That's not a law
17 enforcement agency, I don't think. It may have some law
18 enforcement capability, it may be a powerful institution, but
19 it's not in law enforcement, state or federal.

20 But when in the carve-out or leading to the carve-out, a
21 person with information gives it to law enforcement
22 voluntarily or in response, and then law enforcement, with
23 any encouragement from a person enjoined, shared the -- is
24 that use, to get back to the big question?

25 MR. HELD: Well, also, Your Honor, on Page 14, the

1 carving-out doesn't mention giving documents. It says
2 enjoined not to further disclose, use, or appropriate any
3 material unless to law enforcement officials at their
4 request. But that doesn't say hand them over documents.

5 THE COURT: Well, I'll argue with you right now on
6 that. If law enforcement asks for a document that you have
7 that you -- Well, there may be some ambiguity there, because
8 if you'd followed my injunction, you would have forthwith
9 delivered all the documents, you wouldn't have any documents.
10 You couldn't give them to law enforcement, you couldn't
11 respond to law enforcement because you wouldn't have them.
12 You might point them in directions where they could find them
13 somewhere. I don't know where that gets us.

14 THE WITNESS: If I might add, there was nothing
15 that -- nothing from our group or us and no inducement,
16 encouragement, or otherwise to hand over those documents that
17 were in the purview of the injunction to congressional
18 delegation or law enforcement other than the request by the
19 attorney general to do it before the injunction went into
20 effect, which is followed by a letter the next day.

21 BY MR. HELD:

22 Q. All right. Mr. Scruggs, your office received notice of
23 the injunction, did it not, on December 11, 2006, at 4:05
24 p.m. Do you dispute that?

25 A. The day it was issued, I think it was December 8th, we

1 were notified of the injunction and in fact sent a copy, my
2 office was, of the injunction as was the attorney general
3 simultaneously. I think he in some capacity was a party
4 here.

5 THE COURT: Whenever you use the word "attorney
6 general," I think you are talking about of Mississippi.

7 THE WITNESS: I am.

8 THE COURT: There is another one.

9 THE WITNESS: That's correct. Just a little state
10 over there.

11 BY MR. HELD:

12 Q. So you received the actual injunction, the order, on
13 December the 8th?

14 A. I did. But the same, that it would not go into effect
15 until a bond would have been posted, which had not happened.

16 Q. That's right. And that's my question. Did you get
17 notice of the injunction informing you that the bond had been
18 posted on December 11, 2006, at 4:05 p.m.?

19 A. No, I did not get it on that day. I got it much, much
20 later. But I assumed that the bond had been posted --

21 Q. Well --

22 A. -- at some point.

23 Q. Let me refer you to --

24 MR. HELD: May I approach, Judge?

25 THE COURT: You may.

1 BY MR. HELD:

2 Q. -- Plaintiff's Exhibit 1. Plaintiff's Exhibit 1 is in
3 four parts, and the first part is the notice that went to
4 you. And if you'll look on the last page, I think you'll see
5 electronically where that was delivered to your office on
6 December 11, as I said, at 4:05 p.m.

7 A. I cannot argue with that.

8 THE COURT: This is --

9 A. I was just not personally aware of it.

10 THE COURT: This is numbered Plaintiff's 1, and you
11 haven't offered it.

12 MR. HELD: Oh. I have not?

13 THE COURT: It's probably in the record somewhere.

14 But for this hearing, since you're asking him about it, I
15 think you probably ought to offer it, and I'll receive it.

16 MR. HELD: We would offer it, Your Honor.

17 THE COURT: It's received. It may be in duplicate,
18 and I think some of the other things may be too, but right
19 now it's offered and received.

20 Let me ask a question for all of us. And Mr. Scruggs and
21 I and you and some others in the courtroom are lawyers, or at
22 least went to law school. Some of us still have law
23 licenses, and the one that's talking now doesn't.

24 But if an injunction order, a mandatory injunction or an
25 injunction against doing something not affirmatively

1 requiring something, but to stop or cease doing something, an
2 injunction order is issued, and as it always has to have, it
3 says effective when an injunction bond in so much amount,
4 that is, unless it's a permanent injunction, after hearing
5 where there is no bond requirement, a bond is fixed. And it
6 might be 10,000, it might be 5,000, it might be 500, it might
7 be 5,000,000. And it might be that the plaintiff who sought
8 that preliminary injunction or temporary restraining order,
9 for that matter, can't make the injunction bond possibly.
10 And I suppose if within a reasonable time it doesn't make the
11 bond or he doesn't make the bond, the injunction would
12 evaporate. It should by its terms.

13 Is the party that's enjoined free to do anything he wants
14 to between the time that the injunction order is signed and
15 the bond is posted within a reasonable period of time? Is he
16 free to do anything and everything so that if he's
17 mandatorily enjoined to deliver documents as you were here,
18 he can instead of delivering the documents where you were
19 told to deliver them, deliver them to somebody else.

20 Now, this gets back to what the significance of that is.

21 It may be that that question is a question for a jury to
22 answer and not for me to answer or worry about right now.

23 And so I'm going to withdraw the question. I'm just

24 going to throw it out there for you all to contemplate. I

25 don't know the answer to it. But I know that the answer may

1 have consequences beyond the question that we've got right
2 before me now, as to how many documents were obtained, taken
3 by employees from their employer, and were not turned back
4 within this injunction period. That's the only question I've
5 got to answer right now, but there are a lot of other
6 questions bouncing around in my mind, and that was one of
7 them. And I'm not going to answer it or ask you to answer it
8 right now.

9 MR. HELD: Well, in Plaintiff's Exhibit 1, there is
10 a notice of an electronic filing December 11 at 10:12 a.m.
11 Central Standard Time showing that the cash bond had been
12 posted. And that was sent to Mr. Scruggs electronically
13 along with the injunction and the notice of the injunction
14 and the notice of -- Well, that was it. That's what was
15 sent.

16 BY MR. HELD:

17 Q. All right. After you received the notice of the
18 injunction before it came into effect on December the 8th,
19 did you talk with the representative of the attorney
20 general's office?

21 A. Yes, I did. On the evening of December the 8th, I talked
22 with the attorney general himself who had received the same
23 ruling of the court, I believe on -- I think it was a Friday
24 afternoon -- I'm quite sure it was -- and we talked after
25 that.

1 Q. Talked about what?
 2 A. We talked about the injunction. And the --
 3 THE COURT: Is that how he obtained his awareness of
 4 the injunction, or was he aware from obtaining communication
 5 from this court, or do you know?
 6 The reason I asked the question is that it is possible
 7 that my clerk's office noticed him like they did you. But if
 8 they did, there was no need for doing it because he was not
 9 involved in the injunction.
 10 MR. HELD: You are talking about the attorney
 11 general?
 12 THE COURT: The attorney general.
 13 MR. HELD: He was notified.
 14 THE COURT: Well, I'm not going to chew out my clerk
 15 for notifying him. I'm just going to say he was not a party.
 16 He had a limited role prior to that.
 17 MR. HELD: But they got their electronic filing.
 18 THE COURT: All right.
 19 BY MR. HELD:
 20 Q. All right, sir. I had asked what your discussion was
 21 with the attorney general after you received the -- I think
 22 you said the night before you received the injunction.
 23 A. No. I said sometime Friday night the day of the court's
 24 ruling.
 25 THE COURT: Which would have been --

1 BY MR. HELD:
 2 Q. December the 8th?
 3 A. That's correct.
 4 Q. All right. Did you call the attorney general or did he
 5 call you?
 6 A. I called him. He called me back. During one of those
 7 conversations he had seen it and was quite concerned that
 8 given the fact that not only State Farm with your client and
 9 others in privity with State Farm were under criminal
 10 investigation, that they would know what he had in his hand
 11 before a grand jury that was impending the next month. And
 12 he was very concerned that your client and thereby State Farm
 13 would get a look. And I think Ms. Schloemer's letter the
 14 next week --
 15 Q. I'm going to get to that.
 16 A. -- would say that better than perhaps I could.
 17 Q. Well, did you and the attorney general discuss that Judge
 18 Acker had some very strong restrictions as to what would
 19 happen, where the documents were supposed to be turned, to
 20 whom they would be turned over, and how they would be safe
 21 kept? Did y'all discuss that?
 22 A. We discussed. We were not splitting hairs about whether
 23 the injunction went into effect or whether a bond was posted.
 24 That didn't come up in the discussion, and it was not in my
 25 mind even though it was in the injunction, the one the --

1 What was in the injunction was the carve-out and the fact
 2 that we -- that for law enforcement at their request. And
 3 he, given the concerns I just expressed, that he expressed,
 4 and Ms. Schloemer expressed just a few days later by
 5 letter --
 6 THE COURT: Was Ms. Schloemer on the phone with him
 7 in a three-way conversation or was it just you and the
 8 attorney general?
 9 THE WITNESS: I think it was just the two of us, but
 10 there may have been others in the room. And we discussed it
 11 again on at least one other occasion over the ensuing
 12 weekend.
 13 BY MR. HELD:
 14 Q. You felt as though the carve-out in the injunction -- let
 15 me see what page it is; towards the end of it, Page 14 --
 16 gave you the right to turn those documents over to the
 17 attorney general, and you would not then be in violation of
 18 the court's injunction?
 19 A. That was certainly the attorney general's interpretation
 20 of it, and I did not disagree with it.
 21 Q. If that was your interpretation of it, I ask why did you
 22 go to the trouble, why did the defendants go to the trouble
 23 of appealing to the Eleventh Circuit Court of Appeals if you
 24 felt that you had a perfect out in this carve-out on Page 14
 25 of the injunction?

1 A. I think that was one of the issues they raised if I
 2 recall it, but y'all will have to ask them, I'm afraid. I
 3 think that was one of the issues they raised. But it was --
 4 THE COURT: He wasn't representing them in this
 5 case?
 6 THE WITNESS: That's right.
 7 MR. HELD: That's out. I understand.
 8 THE WITNESS: And that was another issue that I
 9 wasn't really sure if I was even within the scope of the
 10 injunction although you have heard those arguments and
 11 apparently have not bought them, Your Honor. But both of
 12 those issues were on my mind, and the carve-out was the
 13 principal thing that he --
 14 BY MR. HELD:
 15 Q. So is that on the 8th? Is it a fact that you and the
 16 attorney general hatched the plan that the carve-out would
 17 protect and you would turn over all the documents to him?
 18 A. Mr. Held, "hatched the plan" is not the proper
 19 characterization.
 20 Q. All right. Well, I don't put any --
 21 A. The attorney general --
 22 Q. -- pride in that term. However you want to say it.
 23 A. -- was very concerned that your client and State Farm and
 24 perhaps others would get a free look at what they would be
 25 asked in a pending grand jury investigation, and he did not

1 want -- given the fact that there was a carve-out in his
2 view, them to get control of these documents and share them
3 and craft their answers to the grand jury.

4 THE COURT: Well, there seems to be some difference
5 of opinion or understanding of the facts regarding where the
6 genesis was for the idea of delivering all the materials in
7 your possession to the attorney general. I've read in the
8 papers and I can detect two lines of thought. One is that it
9 was the attorney general's idea, which seems to be what you
10 are saying or suggesting, and another that says, no, it was
11 your idea. And there are two ways to interpret the material
12 I have and the evidence I'm hearing.

13 I could call somebody and say, "Now, if you ask me to
14 send you something, I'm going to send it to you. You've got
15 to understand you are asking me now. Are you asking me?"
16 "Yes, I'm asking you." "Oh good. I'm sending it to you."

17 And I think that's what Mr. Held's position is, that he's
18 suggesting that the idea of protecting these documents from
19 the purview of the injunction was your idea and not the
20 attorney general's idea. The attorney general had copies.
21 I'm not saying that -- I didn't hear the conversation. You
22 were a part of it. But I think that eventually somebody is
23 going to have to decide whose idea it was. Did you put the
24 bee in his bonnet or did he put the bee in your bonnet?

25 THE WITNESS: I did not put the bee in his bonnet,

1 but we shared the same bee, that that is fair.

2 BY MR. HELD:

3 Q. Well, you thought that if Judge Acker's injunction went
4 into place there on that Friday night, December the 8th, that
5 counsel for Renfroe would violate that order and make those
6 records available to Renfroe and/or State Farm?

7 A. Did I believe that?

8 Q. Yes.

9 A. I had no doubt that they would.

10 Q. That they would?

11 A. Yes.

12 Q. You had no doubt that my law firm would turn the records
13 over to Renfroe and State Farm in violation of Judge Acker's
14 order. Is that your testimony?

15 A. I had no doubt -- I didn't know your law firm. I met you
16 today for the very first time and Ms. Stanley as well. I had
17 no knowledge of what you might or might not do. You
18 represented Renfroe, and I didn't know what you would do. I
19 did not trust what you might do or what your obligations were
20 to your client, Renfroe, and their obligations to State Farm.
21 And I did not trust it at the time.

22 Q. So you thought --

23 THE COURT: I don't know that he has said anything
24 that suggests to me or satisfies me that he fully read or
25 understood the last paragraph of my order, because if he

1 concluded or believed that there was a possibility or a
2 probability that State Farm would obtain that, then he is
3 suggesting that lawyers to whom the product was to be
4 delivered might well violate not their obligation to their
5 client but the obligation to me, which is paramount in this
6 case.

7 And I'll have to tell you that I'm not right now judging.
8 I'm not asked to judge whether or not Mr. Held or Ms. Stanley
9 has violated that. I don't think they have. I don't have
10 any suggestion that they have. But just as an officer of the
11 court, neither one of them has done anything or said anything
12 to me that would suggest that they would or could.

13 Anything is possible, but you are turning the possible
14 into the probable the way you expressed it. You might have
15 feared that, but I'm afraid that it was an unfounded fear. I
16 hope it was.

17 THE WITNESS: And the attorney general of
18 Mississippi had the same fear at the same time.

19 THE COURT: Well, Ms. Rigsby said that she was
20 paranoid, and we all get a little that way from time to time.
21 I think you were a little paranoid there.

22 THE WITNESS: It was not paranoia.

23 THE COURT: You know, I'm not being judgmental and I
24 don't mean to overstate it because I get upset and judge
25 things against myself or in my favor.

1 THE WITNESS: Given the knowledge I had from my
2 negotiations with State Farm about the relationship with
3 Renfroe and given the knowledge from our clients --

4 THE COURT: We all deduce from what we know in our
5 experience.

6 THE WITNESS: Right.

7 THE COURT: And you made a deduction there that to
8 you at the time might have been a reasonable one. And I'm
9 not going to argue that entirely. I just don't think it was
10 reasonable knowing what I know on top of what you know. But
11 that may be something that we'll have to decide one of these
12 days.

13 MR. HELD: Let me ask Mr. Scruggs this question.

14 BY MR. HELD:

15 Q. If you and the attorney general were so concerned about
16 this on Friday, December the 8th, I wonder why, and can you
17 explain in looking at Plaintiff's Exhibit 9, did they wait
18 until December 12 to write a letter to you asking that you
19 turn over the documents when the injunction was then in
20 place? Do you have any idea about that?

21 A. It was less than 24 hours.

22 THE COURT: What's that exhibit number?

23 MR. HELD: 9.

24 A. I don't have any knowledge why it took one working day to
25 get the letter out, which is what we're talking about here.

1 No, I don't.
 2 BY MR. HELD:
 3 **Q.** I don't know. Maybe the attorney general of Mississippi
 4 just works Monday through Friday. But if this matter was of
 5 such great importance and you were worried about these
 6 documents getting into the hands of State Farm and having
 7 some effect on any testimony that might be given to a grand
 8 jury, don't you think it would have been reasonable to write
 9 this letter on Saturday morning and hand-deliver it to you
 10 and say let me have these records now?
 11 **A.** Well, I know the attorney general of Mississippi well
 12 enough, having conversed with him on Friday night and, I
 13 think, Saturday, in addition to that, wherein the first
 14 conversation where he became aware from his office of the
 15 carve-out, that he wanted those documents like right now, and
 16 the written request by his office to confirm that. And
 17 that's what Ms. Schloemer's letter is on Tuesday following
 18 the late Friday injunction.
 19 **Q.** And how did this letter get to you?
 20 **A.** She e-mailed it to me, Ms. Schloemer, the deputy attorney
 21 general, assistant rather.
 22 **Q.** Do you have a copy of it showing the e-mail information
 23 as to when it was e-mailed?
 24 **A.** I'm quite sure we do.
 25 **Q.** When did you turn over the documents?

1 **A.** I instructed my office in Moss Point to do it forthwith,
 2 and I want to say it was probably not late Friday night after
 3 I had talked to the attorney general the first working day,
 4 and they obviously did it the very next day.
 5 **Q.** Did you turn them over before you got the letter?
 6 **A.** I don't think --
 7 THE COURT: That's just been said unless the letter
 8 is misstated.
 9 **A.** No, I don't think I turned them over before I got --
 10 THE COURT: There are two ways to turn over. One is
 11 to hand it to somebody and one is to put it in the FedEx box
 12 or UPS box or the U.S. Mail. That could constitute delivery.
 13 Which way was it delivered?
 14 THE WITNESS: Your Honor, I had instructed the
 15 office to send them to the attorney general before I received
 16 that letter. But based on the request by the attorney
 17 general foreman to be followed by a letter, which it was.
 18 THE COURT: So that the letter was a follow-up
 19 promise by him to give you a letter?
 20 **A.** That's correct.
 21 THE COURT: He told you he was going to give you a
 22 letter and he did give you a letter?
 23 THE WITNESS: That's correct.
 24 THE COURT: So the letter came U. S. Mail and it
 25 came within the date between the time it was dated and the

1 time ordinary delivery would have been delivered to you?
 2 THE WITNESS: Your Honor, I don't recall whether we
 3 got it by the U. S. Mail, but we got it by e-mail on the
 4 12th.
 5 THE COURT: Well, back to the delivery from you to
 6 him, not him to you, was it by some kind of transportation or
 7 did the attorney general come for it or did somebody in your
 8 office take it to the attorney general, because the attorney
 9 general doesn't have an office in Moss Point?
 10 THE WITNESS: That's correct. They were FedEx'd to
 11 the attorney general on the same day as that letter, which
 12 was --
 13 THE COURT: Which was Monday?
 14 THE WITNESS: -- Tuesday.
 15 THE COURT: Tuesday?
 16 All right.
 17 BY MR. HELD:
 18 **Q.** Are you familiar with the e-mail sent by Doug Jones to
 19 Courtney Schloemer and her e-mail back to him on December the
 20 17th?
 21 **A.** I don't know who Doug Jones is. So I'm not, no.
 22 **Q.** Well, have you seen a copy of an e-mail?
 23 **A.** I saw it --
 24 **Q.** Anybody furnish it to you?
 25 **A.** -- about an hour ago.

1 **Q.** In the documents that we supplied?
 2 **A.** Well, I saw it at counsel table.
 3 THE COURT: And that's 15? She's showing me a 15.
 4 MR. HELD: Yes, Your Honor.
 5 BY MR. HELD:
 6 **Q.** Do you know what Ms. Schloemer was talking about on
 7 December the 17th -- and this would have been five days after
 8 you said that you had already delivered the documents when
 9 she said: I did make a request for the documents, but it was
 10 conditioned on Judge Acker's agreement to such an
 11 arrangement?
 12 Do you know anything about that?
 13 **A.** My only explanation for that is that after the documents
 14 had already been FedEx'd and I had given instructions to do
 15 it, Ms. Schloemer later on the 12th sent another e-mail
 16 suggesting that maybe she was hasty in this letter that I
 17 forget what the exhibit number is.
 18 **Q.** You mean in addition to No. 9, the letter to you?
 19 **A.** Yes. It came several hours, if not the end of the day,
 20 on a Tuesday, saying that perhaps we should ask Judge Acker's
 21 permission to do it. And it was too late. They were already
 22 on the way. They had been picked up by FedEx.
 23 **Q.** Do you have any idea what she was referring to when she
 24 said in this e-mail of December 17, 2006: Judge Acker
 25 already trashed this office?

1 **A.** I was not here. I can only surmise.
 2 THE COURT: Well, continue. It says in his order.
 3 MR. HELD: Well, in his order.
 4 THE COURT: I want to know where you got this.
 5 MR. HELD: From Doug Jones.
 6 THE COURT: Okay. Well, that's just, I guess, you
 7 were talking about, somebody was, curiosity. Well, I guess
 8 my curiosity has been satisfied. I should have been able to
 9 figure that out. But --
 10 THE COURTROOM DEPUTY: That hasn't been offered,
 11 Judge.
 12 MR. HELD: We'll offer it.
 13 THE COURT: Is it offered?
 14 MR. ROGERS: We'd object, Your Honor. We'd object
 15 to Plaintiff's Exhibit 15, Your Honor. It's an e-mail
 16 between Courtney and Doug Jones. My understanding is Mr.
 17 Jones represents Renfro in some capacity. This witness has
 18 never seen this e-mail. We've never seen it before today.
 19 THE COURT: Well, I don't know exactly what -- What
 20 would be the relevance of this?
 21 MR. HELD: Well, just to show that she's saying on
 22 December the 17th that she was talking about having an
 23 agreement from you about the delivery of the documents. And
 24 then she had already delivered them on -- or they had been
 25 delivered to her.

1 THE COURT: Well, she may be, and this is
 2 interpreting her, and I'm having to interpret her because
 3 she's not here to answer for herself. But just interpreting
 4 her to the best of my ability, when she says subject --
 5 conditioned on Judge Acker's agreement, she may be referring
 6 to the carve-out part, which was not bargained for by her.
 7 She didn't demand that, and I didn't concede that --
 8 MR. HELD: I know --
 9 THE COURT: I did that on my own hook, although it's
 10 true that she, representing the attorney general, did
 11 complain about the problems with the criminal investigation
 12 that this might cause. And it is for that reason, and
 13 knowing that, that I did put the carve-out in there. So to
 14 that extent, I agreed with her. I didn't agree with her
 15 after this memo.
 16 And to interpret her remark to Mr. Jones that Judge Acker
 17 trashed this office, which I take it she means the attorney
 18 general's office, I was a little harsh with her, I'll
 19 concede. I could have been a lot harsher than I was both
 20 orally and in the order. But I didn't say anything in the
 21 order that I think was trashy. That's just my
 22 interpretation.
 23 I don't know what significance it has or may have, but
 24 I'll receive it for what significance it might have.
 25 Overruled. In.

1 BY MR. HELD:
 2 **Q.** Mr. Scruggs, did you talk with Mr. Hawley about the
 3 delivery of the documents?
 4 MR. HAWLEY: Your Honor, I object. Attorney-client
 5 privilege and I think it's beyond the scope.
 6 THE COURT: Overruled.
 7 **A.** About how --
 8 BY MR. HELD:
 9 **Q.** About the delivery of the documents either to our office
 10 in accordance with the judge's order or turning them over to
 11 the attorney general under the carve-out provision, if that's
 12 what it meant.
 13 THE COURT: Under anything.
 14 BY MR. HELD:
 15 **Q.** Under anything.
 16 THE COURT: Did he talk to him about the delivery.
 17 **A.** Yes, sir. Yes.
 18 BY MR. HELD:
 19 **Q.** And when?
 20 **A.** I don't recall. I would think it would be shortly after
 21 the attorney general requested the documents. But I don't
 22 recall how long afterwards. I've talked to him a number of
 23 times since then about it.
 24 **Q.** Well, did you tell him that you had turned over the
 25 documents to the attorney general?

1 **A.** Yes.
 2 **Q.** And, again, you turned over the documents --
 3 THE COURT: Was that before or after Mr. Hawley or
 4 either of the Rigsbys asked you to return them to Mr. Hawley
 5 or the Rigsbys, if they did? And Ms. Rigsby has testified
 6 that she, and she thinks Mr. Hawley on her behalf, asked you
 7 to return them.
 8 THE WITNESS: He did. And my understanding -- my
 9 recollection is that my discussions with Mr. Hawley were
 10 before he asked me to send them back to Mr. Held.
 11 THE COURT: Well, were there discussions that -- did
 12 Mr. Hawley or either of the Rigsbys ask you to return any of
 13 the documents between the time the injunction order was
 14 entered and the time you delivered the documents to the
 15 attorney general?
 16 The reason I ask that question is if Mr. Hawley requested
 17 their return and the attorney general requested their
 18 delivery to him, you had a choice to make. You had one set
 19 of documents, and you had to decide where to send them, or to
 20 send them nowhere and to keep them. You had to make a
 21 decision there. But you don't have to make a decision if you
 22 weren't asked by two people before you had reacted.
 23 So my question is, again, who asked you first, Mr. Hawley
 24 or the attorney general?
 25 THE WITNESS: The attorney general.

1 BY MR. HELD:
 2 **Q.** Did you tell Mr. Hawley immediately after you turned the
 3 documents over to the attorney general that they had been
 4 turned over to the attorney general?
 5 **A.** Sometimes shortly thereafter, yes, I did.
 6 **Q.** I want to show you Plaintiff's 6 and 7. I don't know
 7 whether we offered those before.
 8 THE COURT: 6 and 7?
 9 MR. HELD: Yes, Your Honor. 6 is a letter from Mr.
 10 Hawley dated December 21, 2006, to Mrs. Stanley and 7 is a
 11 letter of January 3, 2007, to Mrs. Stanley, talking about
 12 those documents. And I don't see anywhere in here where it
 13 acknowledges that the documents had been turned over to the
 14 attorney general. And we offer them, Your Honor.
 15 THE COURT: All right. 6 and 7 Plaintiff's are in,
 16 a letter of January -- of December 21 and letter of
 17 January 3, both to Ms. Stanley from Mr. Hawley.
 18 BY MR. HELD:
 19 **Q.** Do you read them as I do, that those don't say anywhere
 20 in them that the documents had been turned over to the
 21 attorney general?
 22 THE COURT: I do.
 23 THE WITNESS: I do too.
 24 THE COURT: In the second paragraph --
 25 MR. HELD: Of which one?

1 THE COURT: -- of the January 3 letter, the
 2 paragraph again:
 3 "Pursuant to Judge Acker's clear directive in court, the
 4 Rigsbys have also requested that The Scruggs Law Firm return
 5 relevant documents to the Rigsbys."
 6 He doesn't say when that took place.
 7 "The Rigsbys were informed, however, that The Scruggs Law
 8 Firm had turned over all of its documents to the Mississippi
 9 Attorney General's Office pursuant to a written request from
 10 the Attorney General's Office."
 11 And that's dated January 3.
 12 MR. HELD: All right. It doesn't. Okay. I
 13 apologize for not picking up on that.
 14 BY MR. HELD:
 15 **Q.** But that doesn't say when they were informed, does it?
 16 **A.** I'm sorry?
 17 **Q.** The letter doesn't indicate when you informed the
 18 defendants' counsel that the documents had been turned over
 19 to the attorney general?
 20 **A.** I have not seen these documents before today personally.
 21 **Q.** But I'm asking --
 22 **A.** And I don't know without my reading them.
 23 **Q.** Without what?
 24 **A.** Without my reading them.
 25 **Q.** Well, you can read them.

1 **A.** Okay.
 2 THE COURT: Let me interrupt just to ask a question.
 3 I've got another set of out-of-town lawyers tomorrow morning.
 4 I had figured we could finish this today. And I still think
 5 we can. But I wanted to tell you that I've got a California
 6 lawyer tomorrow morning in a status conference where I'm sure
 7 that he's probably on his way by now. I guess the question
 8 then is how long do you think you'll continue and what --
 9 MR. HELD: I'm about through.
 10 THE COURT: -- if anything, does the other side of
 11 the table have to offer? I don't think too much, I hope.
 12 And, you know, I talked about closing arguments, which I
 13 said Ms. Stanley was making earlier. It may well be that
 14 closing arguments would be appropriate and helpful in this
 15 case.
 16 The matter I have tomorrow morning is at 9:30?
 17 THE COURTROOM DEPUTY: Yes.
 18 THE COURT: We can go on and finish this up and let
 19 you make your closing statements or arguments subject to any
 20 supplements or briefs that you might want to file or that I
 21 might ask for this afternoon. Or we could come back at 8:30
 22 in the morning, and that will give you an hour to wind it up.
 23 I just give you those thoughts because I can see that I don't
 24 want to try to interrupt that tomorrow morning's activities.
 25 MR. HELD: The latter would be my preference, Your

1 Honor, 8:30 in the morning.
 2 THE COURT: Well, I don't want to give y'all time to
 3 think about it too much tonight so you'll be coming back
 4 strong with a bunch of other stuff after Mr. Scruggs.
 5 MR. HELD: I mean finished with him.
 6 THE COURT: Well, you can finish with him?
 7 MR. HELD: Yes.
 8 THE COURT: Let's finish with him so he can go on
 9 about his business, and then we'll see where we are. And if
 10 we have other witnesses or closing arguments, we can do that
 11 maybe in the morning. But let's finish Mr. Scruggs.
 12 MR. HELD: May I confer with Ms. Stanley?
 13 THE COURT: Yes.
 14 (Discussion off record.)
 15 MR. HELD: That's all we have, Your Honor.
 16 THE COURT: Cross examination?
 17 MR. ROGERS: With permission, yes, sir.
 18 Mr. Scruggs and Your Honor, I'll try to be very brief
 19 given the hour of the day.
 20 CROSS EXAMINATION
 21 BY MR. ROGERS:
 22 **Q.** Until this lawsuit was filed, Mr. Scruggs, did you have
 23 any awareness from any source that the Rigsbys were subject
 24 to an employment agreement that included a confidentiality
 25 provision?

1 **A.** No.
2 **Q.** In May of 2006 before this data was retrieved from the
3 State Farm system and delivered to law enforcement, did you
4 and other members of the Scruggs Katrina Group --
5 **MR. ROGERS:** May I deliver a copy of this?
6 **THE COURT:** Yes. And then give a copy to her. And
7 if she hasn't marked it as your exhibit, mark it Scruggs
8 Exhibit 1 if not already.
9 **MR. ROGERS:** Yes, sir, Scruggs 1.
10 **BY MR. ROGERS:**
11 **Q.** Did you and other members of the Scruggs Katrina Group
12 file this lawsuit in the United States District Court for the
13 Southern District of Mississippi on behalf of these, I don't
14 know the number, 400 to 500 policyholders against State Farm
15 arising out of the Katrina disaster? And I'll call this the
16 McFarland case.
17 **A.** The file stamp that's on there, March 9, 2006, which was
18 three or four months before we ever saw the documents that
19 are on the --
20 **Q.** It may have said March. Double check me and see if it
21 doesn't say May.
22 **A.** It says May. Did I say March? I'm sorry.
23 **Q.** I thought I heard March.
24 **A.** It says May 9th. That's right. The answer is correct.
25 **MR. ROGERS:** We offer Scruggs Exhibit 1, Your Honor.

1 **THE COURT:** It's received.
2 **BY MR. ROGERS:**
3 **Q.** After this court, Judge Acker, issued his ruling in
4 January that said that you were in fact covered by the
5 injunction and you would be subject to jurisdiction here, did
6 you thereafter undertake to divest yourself of the Rigsby
7 documents, if you will, and get those returned back to
8 Renfroe's counsel pursuant to the terms of Judge Acker's
9 order?
10 **A.** I had nothing to give back after I had sent them to the
11 attorney general --
12 **Q.** I stand corrected.
13 **A.** -- except for the few that have trickled down from
14 co-counsel that I was not aware of.
15 **Q.** I have pulled a Federal Express document from these two
16 boxes, Mr. Scruggs, that would indicate it came from your
17 office in Moss Point.
18 **MR. ROGERS:** And with the court's permission, I just
19 went to these documents and got it. This is the only copy I
20 have, which, literally, I just pulled it out of one of those
21 boxes, Your Honor. But if I may show the witness and ask him
22 to see if he can confirm that this would be from his office
23 in Moss Point, the address is correct, and it shows a
24 delivery on December 12 of 2006?
25 **THE COURT:** Delivered by him?

1 **MR. ROGERS:** Yes. Directed to the attorney general
2 for the state of Mississippi.
3 **A.** Yes.
4 **THE COURT:** Do you want to make that an exhibit
5 number?
6 **MR. ROGERS:** With permission from the court, Scruggs
7 Exhibit No. 2 would be --
8 **THE COURT:** All right. Scruggs 2 is offered and
9 received.
10 **MR. ROGERS:** And, Madam Deputy, I was hoping we
11 could get a copy so I could --
12 **THE COURT:** We can make you and Mr. Held copies.
13 **MR. ROGERS:** Thank you.
14 If I might have a moment to confer with my partner and
15 colleague.
16 (Discussion off record.)
17 **BY MR. ROGERS:**
18 **Q.** Mr. Scruggs, I want to make sure the evidence is
19 consistent with what I said to the court earlier when this
20 proceeding began. But at the time that you met with the
21 Rigsbys for the first time in February of 2006 with respect
22 to Katrina matters, is it a correct statement that you
23 already, you and your law firm were already engaged in
24 representing hundreds of policyholders of State Farm arising
25 from the Katrina disaster?

1 **A.** Going on a thousand had already contacted us about
2 representation, and we were evaluating under contract well
3 over 200 by then once we evaluated their claims. But almost
4 a thousand State Farm policyholders before we ever -- I ever
5 discussed with the Rigsbys sometime in February this matter.
6 Yes.
7 **Q.** I want to be clear that these documents in this data dump
8 series of boxes played no role whatsoever in connection with
9 the filing of the McFarland lawsuit that was filed in May,
10 some 30 days before they actually printed documents out of
11 the State Farm system; is that correct?
12 **A.** That's correct. And we didn't see them until July or
13 August time frame.
14 **MR. ROGERS:** I believe that's all, Your Honor.
15 Thank you, Mr. Scruggs.
16 Thank you, Your Honor.
17 **THE COURT:** Mr. Hawley?
18 **MR. HAWLEY:** Just a few questions, Your Honor.
19 **CROSS EXAMINATION**
20 **BY MR. HAWLEY:**
21 **Q.** Mr. Scruggs, Greg Hawley, and I represent the Rigsbys.
22 I just want to clarify and make sure that we're all clear
23 on these different batches. There were a couple of times in
24 your examination with Mr. Held where you referred to the
25 batches, and I just want to make sure that the terminology is

1 all consistent.

2 Ms. Stanley refers to batch one as the February meeting

3 that you had with the Rigsbys, and that was about 20 pages of

4 documents; is that about right?

5 **A.** Approximately.

6 **Q.** And then there was the April series of meetings where 20

7 to 50 pages of engineering reports were given to you over the

8 course of several different meetings. That's batch two?

9 **A.** That's correct.

10 **Q.** Okay. And batch three is what we've all been calling the

11 data dump. And there were a couple of times in your

12 testimony I just want to clarify where you mentioned the

13 court and we and the Rigsbys have talked about three

14 duplicate sets of documents, this, we think, being one set.

15 There were a couple of times where you talked about batch one

16 and batch two and batch three in the context of the data

17 dump. I just want to make sure that our terminology is

18 right. My understanding is that that is all consistent of

19 three duplicate sets of documents. Is that your

20 understanding?

21 **A.** That's correct. That is my understanding.

22 **Q.** And one of those went to federal investigators that

23 picked them up at the Rigsbys' home?

24 **A.** That's correct.

25 **Q.** And one was picked up by someone from the attorney

1 general's office of Mississippi and picked up at their home?

2 And the third set --

3 **A.** Yes.

4 **Q.** -- was ultimately delivered to you in late July, early

5 August?

6 **A.** Some prolonged period after that. That's the best of my

7 recollection.

8 **Q.** Yes. And it was after you had hired the Rigsbys as

9 consultants for the SKG Group. Is that also right?

10 **A.** Yes, it was.

11 **Q.** Okay.

12 Now, you and Mr. Held went back and forth a couple of

13 times about what happened. These documents right here once

14 they were delivered to your Moss Point office, I think you

15 said earlier in your testimony that they were delivered to

16 your office and stayed in that same form or shape until they

17 were ultimately delivered to the Mississippi attorney general

18 on December 12th; is that right?

19 **A.** I think what I meant to say was that they were all

20 delivered and I don't recall them being in any sort of

21 container like that.

22 **Q.** Okay.

23 **A.** And our office just -- they were up under a folding table

24 virtually the whole time in smaller boxes than the two that

25 are there.

1 I can only guess that my office reboxed them to deliver

2 to the attorney general in the two that appear in court

3 today.

4 **Q.** Okay. And do you recall Cori Rigsby telephoning you

5 about these documents after the issuance of the injunction?

6 **A.** Yes.

7 **Q.** Okay.

8 THE COURT: When you say these documents, are you

9 talking about the three batches or the last batch that are in

10 the boxes?

11 MR. HAWLEY: Your Honor, I'm talking about the data

12 dump set from the Moss Point office.

13 THE WITNESS: I think that her call was beyond that

14 in scope, that included.

15 MR. HAWLEY:

16 THE WITNESS: But anything that we had that had come

17 from her or Kerri's employment relationship with Renfroe.

18 THE COURT: This is not the same question, but it's

19 an allied question. And make sure I get it. When you had

20 your conversation or conversations with the attorney general

21 of Mississippi and thereafter mailed materials to him, which

22 subsequently he delivered to Mr. Hawley who delivered them to

23 Mr. Held, did what you gave to the attorney general of

24 Mississippi include only the third set of documents in the

25 boxes that are in the boxes now? Or is there in the boxes

1 now, are there in the boxes now duplicates or otherwise the

2 documents that are number one in February and the documents

3 that are number two in April?

4 THE WITNESS: My belief is that they are largely, if

5 not totally, duplicates. But they had been delivered to the

6 attorney general before, long before the issuance of your

7 injunction.

8 THE COURT: Well, I understand --

9 THE WITNESS: That was the federal people.

10 THE COURT: -- that they had been delivered long

11 before the injunction. But I'm talking about your copies of

12 them, because you've testified that after the injunction or

13 contemporaneously with the injunction you delivered boxes by

14 FedEx to the attorney general. My question is, and should

15 have been earlier, I suppose, did those boxes include

16 everything you ever got from the Rigsbys or just the last

17 box? because somebody had to put them in the boxes to mail.

18 What was in there, just the stuff that came from the dump

19 supposedly or all of the documents, even though they might

20 have been duplicates? I have no doubt that there are

21 duplicates in there. But are there possibly documents that

22 were not delivered to the attorney general of Mississippi

23 when those boxes were delivered?

24 THE WITNESS: Your Honor, my instructions to my

25 office were to send everything that our office had to the

1 attorney general. And that seemed to be the focus of all of
2 the things from my reading of your earlier transcripts and so
3 forth.

4 THE COURT: Well, assuming that I looked in those
5 boxes, which I don't know that I'm promising to do or
6 promising not to do -- If I were going to make a promise
7 right now, it would be a promise not to do it. But I would
8 suspect to find, based on your instruction to your office,
9 everything that you ever got from the Rigsbys, a copy, so
10 that your office would be denuded of anything and everything
11 that the Rigsbys ever furnished you.

12 THE WITNESS: I believe that to be the case. Now, I
13 have not compared them and seen that. I have given the
14 attorney general, as I mentioned, the two categories previous
15 to that, before the injunction.

16 THE COURT: And you don't know whether the attorney
17 general, for instance, has made a comparison in his office
18 between what he got earlier and what you delivered on
19 December 12th, so that we don't know whether he could confirm
20 that it was identical, that all the material that he already
21 had he got again and nothing more?

22 THE WITNESS: I don't know of any process like that
23 that might --

24 THE COURT: All right.

25 You asked only one question and I asked more than one. I

1 apologize.

2 MR. HAWLEY: Yes, sir. I have at least one more if
3 Your Honor will indulge.

4 THE COURT: I knew there would be one more.

5 BY MR. HAWLEY:

6 **Q.** Can you tell me, Mr. Scruggs, what you told Cori Rigsby
7 when she called you after the issuance of the injunction?

8 **A.** We had no documents in our office, and that was based on
9 the reports that had come back pursuant to my instructions to
10 my staff and everyone.

11 THE COURT: Did she say, "What am I going to do?
12 What am I going to do?" when you said that?

13 THE WITNESS: No. I think -- if I'm permitted --

14 THE COURT: I guess that's an unfair question.

15 MR. HAWLEY: That's all I have, Your Honor.

16 THE WITNESS: The short answer is no.

17 THE COURT: Let's excuse Mr. Scruggs.

18 MR. ROGERS: I need to cover one area. And I've
19 asked for Mr. Held's permission, but I didn't ask for yours.

20 THE COURT: All right.

21 MR. HELD: And I had one other thing, Judge, too.
22 Go ahead.

23 THE COURT: We'll keep bouncing it around a little
24 bit maybe. Let's see. Try to keep it within the scope of
25 some examination that's taken place, including mine.

1 MR. ROGERS: Yes, sir.

2 FURTHER CROSS EXAMINATION

3 BY MR. ROGERS:

4 **Q.** Let me make sure the court understands something, Mr.
5 Scruggs. You don't have any documents left in your office to
6 your knowledge unless a document or documents were attached
7 to some filing that's been placed in the hands of either a
8 clerk's office or possibly in connection with this sealed
9 matter, which might be something that was submitted in
10 connection with another case in which the record has been
11 sealed either openly accessible in the clerk's office or a
12 sealed matter. Would that be a correct statement?

13 **A.** That is correct as to that except for the fact that as we
14 have supplemented what we have found subsequently in
15 somebody's hard drive or something just inadvertently after
16 searching for them, that's all I know of.

17 **Q.** And this is my last question. Have you undertaken all
18 reasonable efforts to get the documents out of your law firm
19 and in addition to that out of the hands of the Scruggs
20 Katrina Group members and even some documents that came from
21 outside of that circle back to Renfroe's counsel pursuant to
22 Judge Acker's order?

23 MR. HELD: Judge, that invades the province of the
24 court.

25 THE COURT: Well, I don't know. It probably does to

1 some degree, but I'll overrule. He's in a position to have a
2 judgment on that and to say what he knows.

3 THE WITNESS: We instructed everyone to comply with
4 the attorney general's request.

5 THE COURT: Well, that leads me to another question.
6 I don't know the exhibit number, the last exhibit number, I
7 think, Exhibit 1, maybe that you filed, which is the lawsuit
8 filed in the Southern District of Mississippi with sort of a
9 mass tort action or contract action or whatever it is, I
10 don't know what the description currently would be, but many,
11 many plaintiffs all suing State Farm, in Case No.

12 1:06-cv-466-LPS-JMR, any case whether large in number of
13 parties and large in importance or small in number of parties
14 and small in importance in the sense of the number of dollars
15 that are involved, you might say, there quite often is a
16 continuation of discovery and of discovery materials being
17 shared not only with parties, attorneys, but with the court.

18 Consistent with and in follow-up to what Mr. Rogers asked
19 you, he asked you, he said, except for documents that are
20 attached to or a part of pleadings, which implies that it's
21 possible, not probable, that items that were acquired through
22 the Rigsbys found a way into court proceedings, whether this
23 one or another one.

24 But my question is, did anything obtained through the
25 Rigsbys find its way into a pleading or a response to

1 discovery after the injunction was issued, which would, if it
 2 did, perhaps put me in a conflict with your obligation in a
 3 case to respond to discovery. I don't know, but I think I
 4 need to know so that we'll know whether that's a problem. If
 5 it's not a problem, it's not a problem. If you say that
 6 nothing that you got from the Rigsbys was used, to use the
 7 word that we talked about a little bit, in any case in which
 8 you are involved after the injunction, then that's your
 9 testimony, and that's all that I would have unless somebody
 10 finds something that would disabuse me of that belief.

11 But my question is, do you know yourself whether any
 12 document or thing acquired through the Rigsbys was used in
 13 response to discovery or in pleadings or in an amendment to a
 14 pleading or otherwise in any pending case after the
 15 injunction, do you know?

16 THE WITNESS: I don't recall any documents that
 17 were. Given the fact that we already represented this large
 18 number of families down there and later more, but this is the
 19 vast majority of them, there were 640 that had been filed as
 20 of the time we did the State Farm settlement that we've
 21 referred to. Last month, I think, maybe in January, it was
 22 actually consummated.

23 Most of those cases are resolved. Some clients in that
 24 group that we had already filed lawsuits for before your
 25 injunction, Trent Lott being one of them, talking about

1 importance and that sort of thing, and the McIntosh case,
 2 which is particularly important.

3 THE COURT: Well, I could see the possibility, for
 4 instance, of the fact that this has had a lot of publicity.
 5 I guess that would be a fair assessment, not just -- And I'm
 6 not talking just about the Renfro case, although it's had
 7 its share too. I'm talking about the State Farm, the Katrina
 8 catastrophe, and the lawsuit, this one, McIntosh, and other
 9 cases down there in Mississippi. I could easily see how it
 10 would be possible for a would-be plaintiff, somebody who is
 11 complaining and had a policy of insurance with State Farm,
 12 for instance, to have seen the 20/20 episode on television
 13 and to come to your office armed with a copy of the videotape
 14 which would have one of these documents on it, which would
 15 refer to one of these documents that the Rigsbys furnished
 16 you, so that you would now have not from the Rigsbys in a
 17 direct way but from a client who is walking in your door a
 18 document which is in the category we are talking about.
 19 There's a nice possibility for you.

20 THE WITNESS: That's also true. Some of the
 21 documents that are contained in these four categories that
 22 we've been discussing today were supplied to me independently
 23 of the Rigsbys by other clients that have come in with
 24 duplicative and even triple --

25 THE COURT: And so you are telling me, and I would

1 have figured it out anyway, that some of the documents that
 2 the Rigsbys gave you, you have gotten from other sources?

3 THE WITNESS: That's correct.

4 THE COURT: I don't know how many, but some, I'm
 5 sure.

6 THE WITNESS: They were the same documents, if not
 7 even more.

8 THE COURT: So we could end up arguing about whether
 9 a particular document that was, quote, used, if that word
 10 describes what was done with it, in litigation after the
 11 injunction was a Rigsby document or was another document. I
 12 mean from another source, which would be entirely separate
 13 and useable by you otherwise unless the injunction by
 14 accident or deliberately precluded its use just because it
 15 was tainted from having been a Rigsby document too. Now,
 16 there's a possibility for you.

17 THE WITNESS: Well, there's, as I think I suggested,
 18 Your Honor, a tremendous amount of crossover there. And I
 19 don't know how this court and the federal court in
 20 Mississippi is going to handle discovery for testimony or
 21 anything else by the Rigsbys or Renfro or anybody else, and
 22 I'm quite concerned about our obligation --

23 THE COURT: Are you saying that I should have more
 24 sympathy for Judge Senter than he has for me, or vice versa?

25 THE WITNESS: Neither. It's just harder for us to

1 comply with the court orders in that court and your order at
 2 the same time without being in contempt of one or the other.

3 MR. ROGERS: Can I object to your questions?

4 THE COURT: I'll sustain your objections.

5 (Laughter.)

6 MR. HAWLEY: Would you like me to renew our motion
 7 to transfer to the Southern District of Mississippi? I'll be
 8 glad to at this time.

9 THE COURT: Well, I guarantee you that Tom Senter
 10 wouldn't like it.

11 MR. ROGERS: Nothing further. And thank you for
 12 letting me go back --

13 THE COURT: All right. Mr. Held wants to wind up.
 14 And I hope that his will wind up.

15 MR. HELD: I just had a couple of things.

16 REDIRECT EXAMINATION

17 BY MR. HELD:

18 Q. I asked this question -- Well, before I get to that. I
 19 may have asked it, and I don't remember what you said.

20 Who packaged all the documents that you sent back or sent
 21 to the attorney general on December 12th? I think you said
 22 they were at your Moss Point office.

23 A. Somebody in my Moss Point office.

24 Q. You don't know who?

25 A. I don't. We only had two full-time employees there at

1 the time.

2 **Q.** Who would they be, do you remember?

3 **A.** Yes. Charlene Bosarge, B-o-s-a-r-g-e. She's worked for

4 me for 27 years. And Ruth -- I'm sorry. Not Ruth Ann.

5 Cecil is a man's name, although it's a female, Ann Grimes,

6 G-r-i-m-e-s.

7 **Q.** Cecil Grimes?

8 **A.** Cecil Ann Grimes is the same person.

9 **Q.** Oh. Cecil Ann?

10 **A.** Right. And the Rigsbys work there as needed as they did

11 for Renfroe when needed. And others come in and work as

12 needed, but not full-time. There are only two full-time

13 there every day.

14 **Q.** Did the Rigsbys help in bundling up all the documents?

15 **A.** I don't think so, but I don't know.

16 **Q.** Okay. The final thing. I know I asked this, and I don't

17 remember what you said. And there may have been an

18 objection.

19 Did you discuss the documents with Mr. Hawley between

20 December 8, when you had talked to the attorney general, and

21 December 12, when you had them shipped to the attorney

22 general?

23 **A.** Yes, sir.

24 **Q.** All right. What did you tell him? In other words, did

25 you tell him you were turning the documents over?

1 **A.** No.

2 THE COURT: Over to Mr. Held?

3 MR. HELD: To the attorney general.

4 THE COURT: To the attorney general.

5 **A.** I'm not sure I said -- suggested that or anything like

6 that. I think that we discussed the issuance of your order

7 on that December 8th. And it was more we had just gotten it

8 and were in the process of looking at it. That was my

9 recollection of that conversation. But that was -- but that

10 suggestion about having to turn them over and all that, I

11 don't recall that being part of that discussion. Or the

12 request by the attorney general or discussions with the

13 attorney general, I don't recall that being that discussion.

14 We did discuss it, but it was --

15 **Q.** To summarize, I'm sorry, I didn't pick up on everything

16 you were saying, did you say that between December 8 and

17 December 12, 2006, you did not tell Mr. Hawley that you were

18 going to turn over the documents to the attorney general?

19 **A.** I might have, but I don't remember doing that.

20 **Q.** All right. Thank you.

21 MR. HELD: Thank you, Your Honor.

22 THE COURT: Yes, ma'am?

23 MS. STANLEY: Just to make the packages complete,

24 Mr. Rogers offered a shipping label from one of the boxes

25 that showed the shipping from The Scruggs Law Firm to the

1 attorney general. Off of that same box is an airbill from

2 the attorney general's office to Mr. Hawley's office, and I

3 would like to offer that as Plaintiff's 17.

4 And then we also from the second box would like to offer

5 the corresponding shipping label from Mr. Scruggs' law firm

6 to the attorney general and the additional airbill off of

7 that same box showing the shipping of that box from the

8 attorney general to Mr. Hawley's law firm.

9 So those would be --

10 THE COURT: Give her those three, and she can number

11 them sequentially for Renfroe, and they will be received in

12 sequence.

13 MS. STANLEY: Thank you, Your Honor.

14 THE COURT: This brings me to quitting time. Y'all

15 have heard that expression.

16 THE COURTROOM DEPUTY: Are those received, Judge?

17 THE COURT: They are received.

18 Do you want to argue this case tomorrow morning or do you

19 want to give me a little break and let me have my meeting at

20 9:30 to 10:30, which I think I can take care of it in an

21 hour, and come after that, or come tomorrow afternoon? I

22 want to hear from you. I want to hear you all react to

23 everything that I've heard today and give you time to think

24 it through.

25 Which do you want? Do you want to come at 8:30 tomorrow

1 morning and try to get it done in an hour, being under the

2 pressure to do it, or do you want to come at 10:30 or do you

3 want to come at 1 o'clock?

4 MS. STANLEY: My preference would be to do it now.

5 MR. HAWLEY: My preference would be to do it after

6 your morning session.

7 THE COURT: I appreciate your asking that, and I

8 understand you'd like to leave just like Mr. Scruggs would.

9 But I'm tired. Some of us old-timers wear out at the end of

10 the day. And it gets into martini hour too, and I know that

11 Mr. Bainbridge needs to tend to that sort of thing.

12 MR. BAINBRIDGE: Thank you, Your Honor.

13 MR. ROGERS: He's been shaking now for about 10

14 minutes.

15 (Laughter.)

16 THE COURT: I'm not going to be able to agree with

17 Ms. Stanley's request. I'm going to say 10:30 tomorrow

18 morning. That will give me time to get the 9:30 matter

19 cleared. And you all come at 10:30, and then we'll go on

20 until noon, and then y'all can fly out of here, and Mr.

21 Scruggs can fly out or otherwise get back to his office right

22 now if he wants to.

23 MR. ROGERS: Your Honor, just so that the record is

24 not somehow misread at some different level or by Your Honor,

25 we would ask the court to indulge us in renewing our motion

1 to dismiss, and then also further stating another motion to
2 dismiss the contempt allegation, if they have rested.

3 THE COURT: Well, I think they've rested. The
4 question is, I hear what you want to get in. You've got it
5 in, but that doesn't mean you can't elaborate on it as far as
6 your closing argument. You can.

7 MR. ROGERS: I just didn't want to overlook that.

8 THE COURT: All right. Y'all have a good evening,
9 and I'll see you at 10:30 tomorrow morning.

10 Nice to have had you with us.

11 THE WITNESS: Thank you, sir. Nice to have been
12 here.

13 (Adjourned at 5:27 p.m.)

14 * * *

1 identical. Can you, Mr. Hawley, do yours for your client in
2 15 minutes?

3 MR. HAWLEY: Yes, sir, I believe I can.

4 THE COURT: And how about you, Mr. Rogers?

5 MR. ROGERS: In less than five.

6 THE COURT: We'll just see how it works out.

7 MR. ROGERS: Yes, sir, I'll do that.

8 THE COURT: Now, I didn't ask or suggest when I
9 asked the plaintiffs the question of whether she could do it,
10 or whether the plaintiff could do it within 20 minutes. But
11 as things either evolved or erupted yesterday morning, the
12 issues were limited in yesterday's hearing, the civil
13 contempt issues, which is what I want to hear closing
14 argument on predominantly.

15 But because I haven't ruled on the plaintiff's request
16 for criminal contempt proceedings to begin, if the plaintiff
17 wants me to pursue that, then I think you must fit or should
18 fit into your 20 minutes why you think that procedure is
19 appropriate at this stage and say something about it because
20 it's still an issue, it's unresolved.

21 I have not denied or granted your motion, although I
22 think that there were some things said and done yesterday
23 which might suggest one or the other possibilities on that
24 subject. So you may feel free to. In fact, I suggest that
25 you tell me why, if you think so, that alternative should be

1 March 20, 2007 10:36 a.m.

2 PROCEEDINGS

3 (Court called to order.)

4 THE COURT: Good morning.

5 (Response.)

6 THE COURT: We didn't debate the question of how
7 long it would take to conduct closing arguments. So that's
8 the first item on the agenda this morning.

9 My view is that 20 minutes to the side ought to do it.

10 Now, we've got two sides over here. Does the plaintiff,
11 considering that it opens and closes and that it has two
12 targets or three, but two are identical, and keeping in mind
13 that you'll have to open and close, that's the party with the
14 burden of proof, can you get it done in 20 minutes?

15 MS. STANLEY: I believe I can, Your Honor. If I
16 could have a little bit of leeway, about 5 minutes --

17 THE COURT: She'll let me know if and when you pass
18 20 minutes in opening and closing, but if you need a little
19 more time -- Are you going to do the total closing argument?

20 MS. STANLEY: Yes, Your Honor.

21 THE COURT: All right. So let's see if you can do
22 it within 20 minutes.

23 Now, we've got two targets, let's say. One is the
24 defendants in the case and the other one is a firm and the
25 individual Scruggs with separate lawyers and issues not

1 pursued.

2 So you start and I'll listen. Ms. Stanley.

3 THE COURTROOM DEPUTY: Do you want a warning, Ms.
4 Stanley?

5 MS. STANLEY: I beg your pardon?

6 THE COURTROOM DEPUTY: Do you want a warning?

7 MS. STANLEY: Yes, please.

8 THE COURT: Mr. Hawley?

9 MR. HAWLEY: Yes, sir. One minor housekeeping
10 matter, Your Honor.

11 THE COURT: All right.

12 MR. HAWLEY: I know that the Rigbys' deposition
13 transcripts are part of what the court has before it. I'd
14 like to make sure that they are a part of the record before
15 the court for purposes of this hearing.

16 THE COURT: Neither of those transcripts -- Of
17 course, they were videod, and neither of you has -- nobody
18 has offered that. Yesterday I deemed the evidence closed.
19 But I don't object to, myself, and I don't know that anybody
20 does object to my using and you using in closing and in
21 argument anything that's in those transcripts that might be
22 different from or a supplement to what I heard from the
23 stand.

24 Do you have any objection to my using those as evidence?

25 MS. STANLEY: None, Your Honor.

1 THE COURT: All right. Then the transcripts of the
 2 depositions will be considered evidence. And as a matter
 3 of -- Well, I don't think they need to be numbered as
 4 exhibits, but we all understand that you can use them as
 5 evidence as to what was said in there and I will consider
 6 that.
 7 MR. HAWLEY: Yes, sir. I think they are cited in
 8 both sides' briefs and I think the whole transcript should be
 9 before the court.
 10 THE COURT: Well, I have no problem with it.
 11 MR. HAWLEY: I assume you don't need extra copies,
 12 but I have some.
 13 THE COURT: No. If I decide to mark them up, I'll
 14 duplicate the pages that I want to play with and use it that
 15 way, but you don't need to give me an extra copy.
 16 MR. HAWLEY: Thank you.
 17 THE COURT: All right. Ms. Stanley.
 18 MS. STANLEY: Yes. I'd like to reserve 5 minutes
 19 for closing.
 20 With this caveat, Your Honor, since I now have an
 21 additional burden in addressing the criminal contempt, I
 22 wonder if I might have 20 minutes for my initial and then
 23 5 minutes.
 24 THE COURT: I'll do that. I surprised you with
 25 that.

1 MS. STANLEY: Yes, you did.
 2 PLAINTIFF'S CLOSING ARGUMENT
 3 MS. STANLEY: May it please the court.
 4 Yesterday, by clear and convincing evidence Renfroe
 5 proved that Mr. Scruggs and the defendants cannot prove that
 6 they have surrendered all the documents that are the subject
 7 of the injunction. The court's challenge to Renfroe
 8 yesterday was to prove a negative. You asked Renfroe to
 9 prove that there weren't any more documents out there, that
 10 the defendants hadn't returned any. You asked us to prove
 11 that the defendants had not returned all of the documents.
 12 Renfroe met that challenge in two ways. The first way
 13 was the disputed number of what constitutes one set of the
 14 data dump. And the second way was by demonstrating very
 15 clearly that they don't know what documents are out there, so
 16 they can't know that they have returned them all.
 17 Let's talk about the disputed number for the data dump.
 18 Ms. Rigsby testified, and you have seen the 20/20 show where
 19 they said that there were 15,000 documents that they had
 20 given to their lawyer. The 15,000 number was also in an AP
 21 story and in a Sun Herald story. Ms. Rigsby testified that
 22 she told 20/20 there were 15,000 because of all the lights
 23 and the camera and all the confusion, but there was no
 24 similar lights and confusion when she repeated that story to
 25 the AP and to the Sun Herald and to the other media folks

1 that she's talked to.
 2 In its complaint Renfroe said that the defendants have
 3 admitted that they copied approximately 15,000 pages of
 4 claims information and provided them to a plaintiff's lawyer
 5 who is a friend of their mother. In their answer the Rigsbys
 6 say the defendants provided such documents to their lawyer.
 7 They didn't deny that in their answer.
 8 In the deposition testimony Ms. Rigsby testified that
 9 based on the number of reams of paper I purchased, there were
 10 roughly 15,000 copies, that there were nine to ten boxes.
 11 Let me demonstrate the arithmetic. Arithmetic is not my
 12 strong suit, but I understand that if you've got nine boxes
 13 times 5,000 sheets, that equals 45,000 pages. 45,000 divided
 14 by three is 15,000. One set. That had been the consistent
 15 testimony, including testimony at the deposition, until
 16 yesterday morning when in the opening statement for the
 17 defendants we were told that it was really only 5,000. And
 18 then the testimony that Ms. Rigsby again made from the stand
 19 was that it was really only 5,000 and it was two boxes and a
 20 little bit more. But it was two full boxes and a little bit
 21 more; they were too heavy for her to carry.
 22 But Mr. Scruggs testified when he said that he had not
 23 only the entire set that the Rigsbys had sent him plus the
 24 stuff from batch one and batch two, he testified that it was
 25 like a box and three-quarters, the boxes that you saw here.

1 So their story doesn't track. Their stories don't line
 2 up. There is a difference and a strong discrepancy in the
 3 number of documents in one set of the data dump. And we have
 4 the answer that confirmed it, the deposition testimony that
 5 confirmed it, and no supplement or no explanation as to why
 6 the deposition testimony, which is clearly misleading, no
 7 excuse or example as to why that should be changed in the
 8 more than 30 days that expired since Renfroe called that
 9 discrepancy to their attention in its replies to their
 10 responses to show cause, which were filed on February 16th,
 11 and till more than 30 days later when yesterday we were told
 12 it wasn't 15,000; it was 5,000.
 13 But even if we accept 5,000 to a set, we still don't know
 14 how many copies of that set were made. We don't know how
 15 many copies of batches one and two were made.
 16 Ms. Rigsby testified that she doesn't know who has got
 17 copies. She doesn't know who copies were given to. She
 18 doesn't know how many copies were made.
 19 Mr. Scruggs testified that he didn't know who got copies.
 20 He didn't know how many copies were made. He didn't know who
 21 made the computer disks with copies on them. He doesn't know
 22 who has those computer disks.
 23 They don't know. There was no accounting, there is no
 24 inventory, and there is no recollection as to what they've
 25 got.

1 Mr. Scruggs told his client that he had given all of the
2 documents to the attorney general in response to the attorney
3 general's request. But we know that's not true, because
4 batches of these documents have been dribbling in since that
5 day. How many more are out there? We don't know.

6 Renfroe has proved by clear and convincing evidence that
7 the defendants and Mr. Scruggs cannot know, cannot say,
8 cannot have returned all the documents.

9 Now, what good would a coercive contempt finding do?
10 What good would it do to have this court find them in civil
11 contempt? The answer to that is that we need more than the
12 meager efforts that they have expended today to get the
13 documents back.

14 Mr. Scruggs has said that he's the leader of the Scruggs
15 Katrina Group. Let him exercise some of these leadership
16 skills and hold his partners and his associates accountable.
17 Let him hold accountable the people to whom he has given
18 these documents.

19 In the case of United States v. Hayes , a defendant made
20 two trips to Switzerland to try and get the required
21 documents back from a partner who would not release them.
22 The Eleventh Circuit upheld a contempt finding against the
23 defendant who had made the two trips to Switzerland saying he
24 had not exercised all of his legal rights under the
25 partnership agreement.

1 The Rigsbys haven't exercised all of their legal rights
2 as clients of the law firm to get their documents back. We
3 ask that the court find civil contempt and order them to
4 exercise reasonable efforts, all reasonable efforts, as the
5 standard requires to get these documents back.

6 Now, let me turn to the criminal contempt aspect of this.
7 And for that, I'd like to use the chart that we didn't quite
8 get to yesterday and point out the delays. It wasn't until
9 December 12th and in fact before December 12th, on December
10 8th, we know that Mr. Scruggs and the Mississippi attorney
11 general conspired to hide the documents away from Renfroe's
12 attorneys by sending them to the Mississippi attorney
13 general. We know that on December 12th, the date that
14 Courtney Schloemer sent the e-mail -- excuse me -- sent the
15 letter to Mr. Scruggs requesting the documents and offering
16 to return them at some later date.

17 We know that Mr. Scruggs told us from the stand under
18 oath that Ms. Schloemer had said after she sent that letter
19 that she told him, and she told the Mississippi attorney
20 general, wait, we need to get Judge Acker's approval before
21 we make that kind of arrangement.

22 The attorney general and Mr. Scruggs ignored that advice
23 from the assistant attorney general, who had been in this
24 courtroom and had been involved in these proceedings, and
25 went ahead and because Mr. Scruggs said these documents had

1 already been shipped, the FedEx truck had left, that he
2 didn't call Jim Hood. And he obviously knew his number. He
3 didn't call Jim Hood and say: Send those documents back.
4 They were sent by mistake. Don't to anything with those
5 documents. Send them on to Renfroe's counsel according to
6 the terms of the injunction.

7 He didn't do any of those things. He allowed them to
8 stay sequestered with the Mississippi attorney general.

9 After the motion for contempt was filed, that's when it
10 was determined that both the defendants and Mr. Scruggs were
11 claiming that they couldn't produce the documents because
12 they didn't have them. There was an effort made to get those
13 documents back from the Mississippi attorney general.

14 But it wasn't until the 2nd of February when the date
15 that the defendants and Mr. Scruggs were ordered by this
16 court to show cause why they should not be in contempt, it
17 was the 2nd of February before the first set of documents --
18 Actually, it was the 1st of February. I take it back. The
19 2nd of February was the deadline for their show cause
20 response. But it was the 1st of February before we got the
21 very first set of documents. So all this time they have been
22 exercising meager efforts to comply.

23 Ms. Rigsby made one phone call to Mr. Scruggs. She did
24 not follow up with any kind of additional request that he get
25 the documents returned from the attorney general. She didn't

1 follow up with any calls to the members of the Scruggs
2 Katrina Group. She didn't follow up with any kind of effort
3 to enforce her legal rights.

4 Mr. Scruggs made one call to his office and said package
5 them up and send them to the Mississippi attorney general.
6 He told his clients that that was all of the documents when
7 we know that is not true. Mr. Scruggs admitted that he gave
8 documents to attorneys in Oklahoma and elsewhere. Has shown
9 no effort to get those back. There has been a consistent
10 effort to do the least amount possible to try and get away
11 with the appearance of complying with the injunction. That
12 is unacceptable behavior, and that's why they should be held
13 in criminal contempt.

14 THE COURT: Let me ask you a question there, because
15 I don't know whether you have read or maybe with the Federal
16 Rules of Criminal Procedure, which Rule 42 is entitled
17 "Criminal Contempt." And among other things, it would
18 require notice, which I could give right here if I intended
19 to give it. I think that would be adequate. But it would
20 require me to request that the -- I'm reading now -- "The
21 court must request that the contempt be prosecuted by an
22 attorney for the government" -- and that's the federal
23 government -- "unless the interest of justice requires the
24 appointment of another attorney. If the government declines
25 the request, the court must appoint another attorney to

1 prosecute the contempt."
 2 From what's occurred in this case today, it would be my
 3 guess that if I called upon the U. S. attorney to prosecute
 4 an attempt here, that she would decline. She's not here
 5 hearing this and there's no representative of her office
 6 here. But obviously the government attorney that's talked
 7 about here would be a government attorney in the district
 8 where the court was sitting who was evaluating and prepared
 9 to preside over a criminal contempt matter, which I may be
 10 wrong in guessing what would happen there, but I think it's
 11 something for me and us, all of us, to consider, because
 12 assuming that she did decline for the sake of trying to make
 13 a decision as to whether to proceed with a criminal contempt,
 14 and I've got to think where that leads, now, that may not or
 15 maybe shouldn't be the total criteria for where's it going to
 16 lead logistically and time wise and commitment wise.
 17 But if I had to appoint a prosecutor because she wouldn't
 18 proceed or declined, and I couldn't make her do it and
 19 wouldn't want to try to make her do it, that's her
 20 prerogative under the terms of this statute, she can decline,
 21 I'd have to appoint somebody.
 22 And I've asked my law clerk, who has this case with me,
 23 to tell me not who to appoint if that happened. I'd have to
 24 evaluate the available experienced prosecutors out there
 25 because I could see right now that to prosecute a contempt

1 hearing, or charge of contempt, against either the Rigsby
 2 sisters or Mr. Scruggs and his firm or both would be a very
 3 large undertaking. And you couldn't undertake it without a
 4 good lawyer and maybe other lawyers to prosecute, like the
 5 U. S. attorney usually has two lawyers or more plus a bunch
 6 of staff.
 7 If she declined and a special prosecutor would be
 8 appointed, then that person, if he or she accepted the
 9 appointment, wouldn't do it or shouldn't do it -- I certainly
 10 wouldn't if I were sitting out there with a law practice. If
 11 I were a practicing lawyer paying my rent on time, I wouldn't
 12 want to undertake this without knowing what the commitment
 13 really and understanding what the commitment was. And if I
 14 had partners, I don't know that they would want to lend my
 15 time for free. And I certainly wouldn't expect them to.
 16 And I've asked Matt Stump over there to tell me if I did
 17 that, where the money would come from and at what hourly
 18 rate. Somebody has told me, I don't know whether I believe
 19 it or not, that there are lawyers in Birmingham that make
 20 \$350 an hour. There may be lesser lights at the bar who make
 21 less than that. I'm sure there are, and I think I could find
 22 one or two that would accept the appointment for a lesser
 23 hourly rate than that. But I point that out to you.
 24 So when you are telling me, as I sort of invited you to,
 25 that I ought to proceed on this track, I'll say in advance I

1 wouldn't and shouldn't and couldn't appoint you or Mr. Held
 2 to be the prosecutor. I say I couldn't. I don't know that
 3 there would be a reason I couldn't, but I don't think that
 4 would be the thing to do, and I wouldn't. I wouldn't do
 5 that. I wouldn't put you in that position and I wouldn't do
 6 it. So I'd have to go somewhere else.
 7 Now, of course, Ms. Martin, the U. S. attorney, might
 8 quickly, if I asked her to take it, might quickly do it and
 9 turn her best prosecutors over to such a case. I don't know
 10 what she would do. But I'm guessing she wouldn't do it based
 11 on what I've seen so far and heard so far.
 12 Now, I say that's not the sole criterion, but it is a
 13 criterion, unavoidable criterion, in making the decision that
 14 I have to make, because even if I were to agree with you that
 15 there is so far some evidentiary basis upon which a jury, if
 16 a jury were demanded, which the targets could demand, and
 17 like I say though, I could take away the jury by agreeing in
 18 advance that the penalty, if any were imposed, would be less
 19 than six months. I believe that's in there too. I maybe
 20 could do that. But even at that, you have to have a
 21 prosecutor. It just doesn't happen.
 22 And you don't know how many other cases I have on my
 23 docket. I do. I don't have to take as many as I do take
 24 simply because as a senior judge I can discriminate and say I
 25 won't take that. But if I took this and turned it into a

1 criminal prosecution, I'd have to take it. I don't think I
 2 could pass it on to another judge. It would be mine.
 3 I have since becoming senior, sometime after becoming
 4 senior, I quit taking criminal cases, but all of a sudden
 5 here I would have created one that I can't get rid of other
 6 than by trying it or in a way of having it compromised by
 7 some sort of plea agreement, which is what happens a lot, but
 8 might or might not happen here. And if it didn't, I'd be
 9 trying a case, maybe a jury case, a criminal case, and one
 10 that would take a good bit of time in the preliminaries
 11 leading to a trial, if the trial happened, and a trial with a
 12 lot of heavy publicity, you might say, people looking over at
 13 what's going on here because it would, I think, have a lot of
 14 notoriety that this one already has to some degree.
 15 And I can't avoid thinking about all of that because I
 16 can see that to go down that path would put a burden on me
 17 and my chambers that would be beyond maybe my capability,
 18 maybe not. You all may think I'm more capable than I think I
 19 am, but I'm not so sure that I can contemplate where that
 20 might lead. This has already taken a lot of time just to get
 21 to where we are right now.
 22 Now, so I guess the question that I put to you is
 23 without knowing what the relative obligations I have in other
 24 matters in comparison to this matter, why would it be so
 25 important to society, which is what we're talking about when

1 we're talking about criminal contempt, we're talking about
2 the societal need to sanction contumacious conduct. Society
3 has an interest in that. If it didn't have an interest in
4 it, this statute wouldn't be here and there would not be such
5 a thing as a criminal contempt proceeding.

6 But right here at this stage while, if I undertook to ask
7 the U. S. attorney to take it or not, prosecute it or not,
8 her prosecutorial discretion would be triggered to some
9 degree, but she doesn't have to tell me or have a reason.
10 She can decline for whatever reason.

11 So really I'm the one right now who is being asked to
12 exercise prosecutorial discretion because prosecutorial
13 discretion has to be exercised by somebody, and right now I
14 think the initial evaluation of whether to proceed there is
15 mine.

16 And not only are we talking about societal interests in
17 prohibiting and therefore punishing past contumacious
18 conduct, if it exists, but we've got to think about the
19 prospects of proving and proving it beyond a reasonable
20 doubt, which would be the burden under a criminal contempt
21 citation.

22 And so whether it's a prosecutor in the U. S. attorney's
23 office or the attorney general of the United States' office
24 or in any prosecutorial decision-maker's office, that person
25 has got to make an evaluation. What are the prospects of

1 success here? Do I have the evidence upon which I can be
2 fairly certain that when the case is concluded and all the
3 evidence is in, there is a prima facie case, there's a jury
4 case, there's a case that somebody has got to make value
5 judgments on as to whether the burdens of proof are met?

6 So even though I don't know whether they would or not and
7 neither would the prosecutor, because a lot of prosecutors
8 can skate on thin ice and be disappointed. They can lose.
9 They can lose at the motion for acquittal stage or they can
10 lose before a jury, but they can lose. And the mere fact
11 that there's a chance that you could lose and the prosecutor,
12 whoever he or she might be, could lose, doesn't stop you.
13 You've got to factor what the prospects are of making a case,
14 but based on what I now have heard and know that's out there
15 in the way of evidence and what the societal interest calls
16 for.

17 And I've just exposed to you what I've been agonizing
18 about already, but I haven't decided it yet. And that's why
19 I wanted to give you a chance to sort of help me a little bit
20 or hurt me, but to tell me. And I think I know what you are
21 going to say without your saying it. You think society has
22 an interest and you think it's not too big a burden for
23 somebody, and somebody's got to do it, and Judge Acker has it
24 and it's his chore.

25 Now, I think that's what you are going to tell me. And

1 I'm not going to agree with you or disagree with you. I'm
2 just putting the words in your mouth. If you have a
3 supplement to that, I'll hear you.

4 MS. STANLEY: Your Honor, if we hadn't felt that
5 there was a societal need to punish the behavior,
6 particularly the conspiracy to withhold these documents, then
7 we would not have asked the court to consider the criminal
8 contempt. But because yesterday you asked us to make a
9 choice as to whether to divide these or to go forward with
10 them together, and we agreed -- all the parties -- to divide
11 them and have the civil procedure heard yesterday and today
12 and then the criminal part at some future time, I would like
13 to have permission from the court to address the questions
14 that you've raised in a pleading where I have an opportunity
15 to address some of these standards and --

16 THE COURT: Since they are separate and even though
17 I asked you or required you to say something about it, since
18 I'm not going to decide it right now, I will give you leave
19 to supplement anything you've said in writing or any words
20 I've put in your mouth by brief to be filed by -- what's
21 today, Tuesday? -- next Wednesday. That will be a week and a
22 day. Is that not enough?

23 MS. STANLEY: Your Honor, with all respect, I have
24 prepaid tickets for a family cruise for next week, and the
25 week after that my son, who is serving in Iraq will be home

1 on leave, and I wanted to have time with him.

2 THE COURT: Well, I don't think that this matter
3 there is any need to decide it really quickly. But there is
4 probably a reason to, but if you are talking -- How about
5 two weeks from this coming Friday, whatever date that is?

6 MS. STANLEY: Very well.

7 THE COURT: The 30th?

8 THE COURTROOM DEPUTY: April 13th.

9 THE COURT: April 13th? Well, April 13th is a good
10 day. That is going to be my 50th wedding anniversary.

11 MS. STANLEY: Congratulations.

12 THE COURT: It was Friday the 13th when we got
13 married and Friday the 13th for our wedding anniversary. So
14 this unlucky date, we might make it to the 13th of April.

15 THE COURTROOM DEPUTY: Well, Judge, from this
16 Friday --

17 THE COURT: From this coming Friday would be a week
18 sooner than that, wouldn't it?

19 THE COURTROOM DEPUTY: Yes. But she said her son
20 was coming home.

21 THE COURT: Well, April 13th will be all right.

22 MS. STANLEY: Thank you, Your Honor.

23 THE COURT: That will give me something to think
24 about besides what kind of gift to come up with.

25 MS. STANLEY: Thank you.

1 THE COURT: All right.
 2 Well, which of you all want to go? Mr. Hawley?
 3 MR. HAWLEY: Yes, sir.
 4 THE COURTROOM DEPUTY: Do you want a warning?
 5 MR. HAWLEY: Please.
 6 THE COURTROOM DEPUTY: Five minutes?
 7 MR. HAWLEY: Five minutes will be great. Thank you.
 8 DEFENDANTS' CLOSING ARGUMENT
 9 MR. HAWLEY: May it please the court, Your Honor.
 10 Greg Hawley. Kitty Brown and I have the pleasure of
 11 representing the Rigsby sisters in this matter. We believe
 12 that the Rigsby sisters are courageous women and are real
 13 heroes in a traditional American sense of that value.
 14 As you know, Your Honor, I want to give you a quick
 15 background to what you've already heard to-date and what is
 16 in the depositions.
 17 The Rigsby sisters have been claims adjusters for several
 18 years. And they worked for Renfro, but most of their work
 19 has been on assignment to State Farm Insurance Company. And
 20 throughout those years they liked their work and they liked
 21 what they did for State Farm and they trusted the company of
 22 State Farm. But last year after the Katrina disaster, they
 23 both began to see very suspicious behavior in the documents
 24 and the activities of the people they reported to directly at
 25 State Farm.

1 They worked out of State Farm offices on the Gulf Coast,
 2 they worked at the direction of State Farm employees, and
 3 they were in a very real sense the public face of State Farm
 4 in their work in adjusting State Farm claims. And as
 5 representatives of State Farm in that context, when they
 6 became more than suspicious of criminal behavior or
 7 fraudulent behavior in engineering reports and duplicated
 8 documents and perhaps even shredded documents, they had a
 9 very, very difficult decision to make, Your Honor.
 10 Under their employment contract with Renfro, it says
 11 many times, and you've seen the contract in this courtroom,
 12 that they have an undivided loyalty to Renfro, its
 13 clients -- State Farm -- and their customers, who are the
 14 policyholders.
 15 When they became aware of that suspicious, fraudulent, or
 16 criminal behavior, they couldn't have an undivided loyalty.
 17 At that point they had to decide as representatives of State
 18 Farm whether to be complicit in the conspiracy that they
 19 thought was fraudulent and not criminal or to blow the
 20 whistle. And I think it took a lot of courage, Your Honor,
 21 to do that. They lost friends. They lost their jobs. And
 22 that behavior is courageous and is to be honored, and we'll
 23 get to the breach of contract in a later proceeding.
 24 THE COURT: That's what you've been talking about so
 25 far, and that is not what we're talking about today.

1 MR. HAWLEY: Yes, sir. That background, I think, is
 2 important to the documents, and I just want to recount what
 3 you heard yesterday.
 4 The first set of documents that they made were given over
 5 to their lawyer in February. There were no duplicate copies
 6 made and they did not retain any copies. That was batch
 7 number one. You heard about that, and we went over it on
 8 this chart yesterday.
 9 No copies retained by the Rigsbys. Batch number two. In
 10 April they made copies over the course of several days or
 11 weeks of engineering reports, and they gave those documents
 12 to their lawyers. Again, the testimony was clear.
 13 THE COURT: Let me interrupt you just a second.
 14 MR. HAWLEY: Yes, sir.
 15 THE COURT: The February documents, your question to
 16 Ms. Rigsby:
 17 "Did you keep your own copy of those or did you give them
 18 all to Mr. Scruggs?
 19 "Answer: I think we turned over our only copy."
 20 That has a certain equivocal sound to it. She didn't
 21 positively say "I turned them over." "I think I turned them
 22 over." "I think we turned them over."
 23 I don't know, you know, what you can make out of that or
 24 what I could make out of it, but I think I would have been
 25 better off and maybe you would have been better off if she

1 had said, "I have no doubt about it. Yes, I turned them all
 2 over." Not "I think we turned them over."
 3 MR. HAWLEY: Yes, sir.
 4 THE COURT: But we live with what was said.
 5 MR. HAWLEY: I understand that, Your Honor, and I
 6 think that we'll get to this later, but under the clear and
 7 convincing standard that they have to meet, "I think that I
 8 gave up all my documents," you know, is on our side of the
 9 equation.
 10 THE COURT: You may well be right.
 11 MR. HAWLEY: So batch number two, the Rigsbys have
 12 retained no documents.
 13 Batch number three, the data dump, the weekend of
 14 June 3rd, you heard that they purchased three boxes of 5,000
 15 pages and they printed off from the computer and made
 16 duplicate copies and ended up with three sets of documents,
 17 one to the state prosecutors, one to the federal prosecutors,
 18 one retained by them, kept in Michele's attic for about two
 19 months until about August 1st.
 20 Then later in July they were hired as consultants by Mr.
 21 Scruggs for his group. And some weeks after that they
 22 delivered the documents that had been in Michele's attic over
 23 to Mr. Scruggs' firm at the Moss Point office.
 24 At that point, Your Honor, about August 1st, the Rigsby
 25 sisters had no documents that are at issue in this

1 injunction. This case was filed on September 1st. The date
2 the case was filed, they had no documents.

3 Now, batch four did come up later, and I think the record
4 is clear on this, Your Honor. Batch four are documents that
5 do not relate to Katrina. They are old State Farm manuals
6 and that sort of thing that Cori Rigsby found in her office
7 at her home when she was cleaning things out. She did turn
8 those over to Mr. Scruggs, but they are outside the scope of
9 this injunction because the injunction relates to documents
10 involving claims of damage caused by the Katrina hurricane.

11 So two points there: One, she turned those over to Mr.
12 Scruggs just like she did the other documents; and, two, they
13 are outside the scope of the injunction.

14 THE COURT: Well, let me interrupt you just to ask a
15 question.

16 MR. HAWLEY: Yes, sir.

17 THE COURT: There has been a good bit of testimony,
18 and I think reasonably offered and reasonably rebutted to
19 some degree at least about what the relationship was and how
20 it was formed and what the responsibilities and obligations
21 were one to the other between the Rigsbys and Mr. Scruggs and
22 his law firm and the Katrina group.

23 You say, and I think you have evidence to back up your
24 statement, that the Rigsbys did not have possession of any
25 documents within the purview of the injunction at the time

1 the injunction was issued. And we've had some testimony
2 about a telephone call or attempts to cover the documents.
3 But we're not talking now, I'm not, in my question talking
4 about what their efforts were or obligations were or how
5 strenuous the effort should be to recover the documents after
6 the injunction was issued and they were aware of it.

7 My question is, are there facts and is there evidence
8 upon which the Rigsbys can be and are vicariously liable,
9 liable under the respondeat superior theory for what Mr.
10 Scruggs did or did not do with the documents. Is he their
11 agent for the purpose of complying with the injunction?
12 They have a relationship.

13 Now, I've heard testimony about what that was and is.
14 And I don't know, Ms. Stanley in her opening and closing
15 argument did not press upon me the question I'm putting to
16 you. But the absence of that theory in her argument does not
17 mean that it's not somewhere in the situation.

18 So is there a possibility that if Mr. Scruggs violated
19 the injunction, they were violating it?

20 MR. HAWLEY: Your Honor, I don't believe so, because
21 I think it's pretty clear from both Mr. Scruggs' testimony
22 and both Rigsbys' testimony in the deposition and Cori
23 Rigsby's testimony here yesterday that they were employed --
24 They did have an attorney-client relationship on this April
25 representation. But when they turned over the documents,

1 they turned them over to him, their employer, and that
2 relationship carries on to this day. They are consultants
3 for the Scruggs Katrina Group.

4 THE COURT: Well, that's the relationship I'm
5 talking about.

6 MR. HAWLEY: I know, and I'm saying --

7 THE COURT: Or were a part of it. I mean there may
8 be two relationships that overlap and get mixed up and
9 interconnected some way. But I'm, I guess you'd say,
10 worried. I think that it may be that he is an extension of
11 them. They are the defendants here. They were the
12 employees. But once they join up with another entity, not
13 only is that entity subject to the injunction, but his
14 activity or lack of it in that connection may constitute acts
15 by them.

16 Now, that's my question, and I'm not sure what the answer
17 is.

18 MR. HAWLEY: Here's my answer, Your Honor. As their
19 employer, Mr. Scruggs was the principal and they were the
20 agents, not vice versa. And so when he delivered those
21 documents to the attorney general of Mississippi, they can't
22 be held responsible for the actions of the principal because
23 they are the agents, they are the employees.

24 THE COURT: So that there's no way to realign the
25 parties like you would in determining whether diversity

1 jurisdiction existed?

2 MR. HAWLEY: I do not think so, Your Honor.

3 THE COURT: So that once they are the agent and he's
4 the principal, then there is no way that they could be
5 vicariously liable for his acts?

6 MR. HAWLEY: That's exactly right, Your Honor. And
7 that's why we argue --

8 THE COURT: Well, you may be right, but it's
9 something I've been worried about.

10 MR. HAWLEY: Yes, sir.

11 THE COURT: And we've got a law clerk that's
12 listening to all this too, and he hasn't explored that for
13 me, although I've been thinking about it. But he will with
14 or without your help later.

15 All right. I interrupted you.

16 MR. HAWLEY: That's all right, Your Honor.

17 The next point is the injunction was issued on Friday the
18 8th. You know that. Our law firm sent a copy of the
19 injunction electronically, within 10 minutes of our receipt
20 of it, to The Scruggs Law Firm. You heard about their
21 conversation later that night.

22 And then on Monday the bond was posted. On Tuesday the
23 record is clear, Ms. Schloemer made a written request, and
24 Mr. Scruggs complied with that request on that very date. So
25 as of 5 p.m. --

1 THE COURT: Do you have any rational reason -- Now,
2 Ms. Stanley described it as a conspiracy. That was her
3 choice of words. I don't know that that word appears
4 anywhere in her pleading. It may or may not. She chose that
5 word a minute ago. But do you have any rational reason why
6 the attorney general of Mississippi would seek Mr. Scruggs'
7 copies of documents that he already had and he knew he had?

8 MR. HAWLEY: Yes, sir, I do.

9 THE COURT: All right. What is it?

10 MR. HAWLEY: Well, you heard Ms. Schloemer in this
11 courtroom some months ago. I heard her say -- Her concern,
12 as I understood it, was she was concerned that these
13 documents constituted state's evidence in a criminal
14 proceeding in Mississippi and that she was concerned that
15 they could be turned over to the targets.

16 THE COURT: She wanted to protect those documents
17 from my order. Is that what you are saying? That's got to
18 be what you are saying.

19 MR. HAWLEY: Well, my recollection of what she said
20 in this court was in support of a motion to stay discovery in
21 this case until after the grand jury proceeding was over.

22 THE COURT: Well, but my question is, we know that
23 the attorney general had -- and nobody contradicted this, not
24 in this courtroom -- he had all the documents.

25 MR. HAWLEY: Yes, sir.

1 THE COURT: You've said, everybody has said that he
2 had all the documents. He had them. He was using them in
3 his investigation. But all of a sudden he writes a letter
4 saying send me your copies of the documents.

5 And, yes, let's assume for the sake of my question and
6 for this inquiry that he was afraid that the documents would
7 get somewhere else and that the protection that I provided in
8 my order which said that the documents would only be
9 delivered to lawyers and for their eyes only unless and until
10 I approved it didn't satisfy the attorney general. He wasn't
11 happy with that.

12 Ms. Schloemer was bent out of shape by it and kind of
13 proved it by something she said, which I am now privy to, and
14 it was not until yesterday that I saw that. She was very
15 unhappy and so was the attorney general. So there was no
16 reason for him to need the records. There was a reason for
17 him not to let the records go like the mandatory injunction
18 required.

19 That's true, isn't it?

20 MR. HAWLEY: Yes, sir. And obviously I cannot speak
21 for the attorney general or the assistant attorney general.

22 THE COURT: Well, I think he's spoken with his acts
23 and with his letters, so we know what his position was.

24 MR. HAWLEY: Well, Your Honor, if I may. Consistent
25 with that and our efforts, Kitty Brown's and mine, after the

1 injunction was issued, to try to get those documents back
2 from the attorney general's office, the message we got back
3 was, "It's state's evidence; we're not giving them up,"
4 until the Rigsbys appeared at the grand jury on January 17th.

5 After the 17th, we contacted her again. "You are done
6 with the records. Are the Rigsbys going to reappear before
7 the grand jury?"

8 "Answer: No.

9 "Well, why can't you give the documents back?"

10 At that point the message from the attorney general's
11 office to us was, "I might be able to now. Let me check with
12 my boss."

13 THE COURT: Do you think there was any temporal
14 connection between the grand jury and the date upon which the
15 first show cause order required some response? because you
16 will remember that my order was to show cause why a show
17 cause hearing shouldn't be held. This is in tiers.

18 So the first date upon which there's got to be a response
19 from the Rigsbys was the date that suddenly the attorney
20 general was able to release those documents or decided to
21 release them.

22 MR. HAWLEY: Your Honor, I think it was
23 coincidental, and I can follow that time line if you'd like
24 me to.

25 THE COURT: All right.

1 MR. HAWLEY: Again, based on conversations we had
2 with the attorney general's office --

3 THE COURT: Well, from what you are saying, you
4 weren't on bended knee begging, which I'm not saying you
5 should have been, but you made it known more than once that
6 you need those records because you've got clients who might
7 be going to jail --

8 MR. HAWLEY: Yes, sir.

9 THE COURT: -- and they want the records.

10 MR. HAWLEY: Yes, sir.

11 THE COURT: And so finally the day before the moment
12 of truth or an early moment of truth, the attorney general
13 succumbs, and you say it's because they're no longer needed
14 in the grand jury.

15 MR. HAWLEY: Well, I haven't finished my story yet,
16 Your Honor.

17 THE COURT: All right. Finish it.

18 MR. HAWLEY: After they appeared before the grand
19 jury on the 17th, that grand jury went on for the rest of
20 that week. The next week there was an announcement in the
21 press of this global settlement involving State Farm and the
22 criminal prosecution in Mississippi. You heard some
23 testimony about that yesterday.

24 THE COURT: Yeah.

25 MR. HAWLEY: And after that settlement was

1 announced, we contacted Ms. Schloemer again and said: Okay.
2 Your case is now settled. Can you give us the documents?
3 And it was the following week that she said, yes, I can. She
4 asked me if I wanted them sent directly to Mr. Held's office
5 or my office. And perhaps as a control freak or just as a
6 good lawyer, I said, I'll tell you what. You FedEx them to
7 me. I'll make sure they are hand-delivered to Mr. Held that
8 day.

9 THE COURT: So there was no temporal connection
10 between -- or no connection, no causal connection, between
11 the delivery that happened to occur, but it did have some
12 relation to the global settlement which did not come off?

13 MR. HAWLEY: That was my understanding that week in
14 my conversations with her, and I think that was Kitty Brown's
15 understanding in her conversations.

16 THE COURT: Well, it may be that the attorney
17 general made a mistake because now they're in those boxes
18 down there.

19 MR. HAWLEY: It could be. And again, I can't speak
20 for the attorney general, but the message that I heard here
21 in court in October and we heard prior to the grand jury
22 appearance by the Rigsbys was, "We need to protect state's
23 evidence." After that it was, "Maybe we can give them up."
24 And after the global settlement was announced, "We can
25 certainly give them up, and here they are."

1 And I don't even know if Ms. Schloemer paid attention to
2 the court schedule here. I just can't speak for her, Your
3 Honor.

4 THE COURT: In the Northern District of Alabama
5 since I became a judge, there have been a lot of -- there's
6 been a lot of talk and some action within the criminal
7 context where some judges and some prosecutors believe in the
8 open file. They don't hold back everything. They don't hide
9 it from everybody. So that even early on before a grand jury
10 reports -- Or you can consider things. Things that are
11 material or might be material are on display so that a target
12 can see it.

13 So that there's nothing in my view -- And this is, I
14 guess, one reason why Ms. Schloemer is bent out of shape,
15 because I think what she was referring to when she said that
16 I trashed her office is that I didn't find a reason within my
17 understanding of the need for those documents to preclude
18 their being in this court in response to my injunction, and
19 that they needed all the protection I could give them.

20 I think probably she's right that I could have done it
21 because, you know, I've got a black robe on. But I didn't
22 think it was appropriate under the totality of the
23 circumstances. And I guess one reason is that I didn't see
24 then anymore than I can see now why they all need to be
25 hidden from Renfroe when Renfroe has by my order guaranteed

1 that it's not going to give them to State Farm. I don't
2 understand that. I didn't understand it then and don't
3 understand it now.

4 I'll take it a step further. If I'm bargaining, if I
5 were in the position of the attorney general of Mississippi
6 and was bargaining with State Farm, I'd want them to see some
7 of the documents, a nice select number. And I bet you they
8 have seen them. I bet you they wouldn't need to go to Mr.
9 Held's office to get some of them. I bet you they have been
10 doled out and some of the most pregnant ones with import have
11 been seen by State Farm. I'd bet my life on it. I don't
12 have a whole lot of life left, so it's not a big bet.

13 But I interrupted you again.

14 MR. HAWLEY: Well, Your Honor, I may respond to that
15 point if I may. The court might be interested to look at one
16 of the court pleadings on that point. And this sort of
17 relates to perhaps -- perhaps it relates really to your
18 discussion with Mr. Scruggs about whether he was reasonably
19 paranoid or unreasonably paranoid in that colloquy yesterday.
20 But this really does answer your question about all of the
21 concerns about the documents.

22 In footnote 14 of a document that Renfroe filed, Document
23 96, on February 16th, it's Renfroe's reply to defendants'
24 written response to the January 19, 2007, order to show
25 cause. Footnote 14 makes me very curious, to use a word that

1 the court, I think, can appreciate.

2 The first part of footnote 14 goes into what the
3 contingency fee arrangement or the profit or the money might
4 be made by Mr. Scruggs in the State Farm lawsuits. That's a
5 setup, footnote No. 14. In that context it mentions Mr.
6 Barrett's telephone call that you've heard so much about, and
7 you sort of explained your understanding of why Mr. Barrett
8 might have been calling.

9 But, Your Honor, in the middle of the footnote it says,
10 "Scruggs fought surrender." And this is the context of
11 disgorging documents in this injunction. "Scruggs fought
12 surrender of the documents until the day the settlements were
13 announced." Two sentences later, "Renfroe believes that
14 Scruggs knew that the purloined documents might assist in an
15 investigation, but did not, in and of themselves, prove
16 liability" -- a citation to, I think, one of the
17 depositions -- "and that's why he worked so hard to keep the
18 documents away from State Farm. If State Farm had seen that
19 the documents were not 'smoking guns,' the settlement total,
20 Renfroe believes, could have been substantially less.
21 Scruggs has profited greatly from violating the injunction."

22 Your Honor, the only inference I can draw from this
23 explanation of Scruggs arguably not complying with this order
24 in order to increase his settlement value of the State Farm
25 settlement is that somehow State Farm would see them.

1 MR. HELD: Somehow what?
 2 MR. HAWLEY: State Farm would see the documents.
 3 That's the inference I'd draw from that, Your Honor. I just
 4 invite you to read it. And you may draw a different
 5 inference, but you were just talking earlier about what
 6 documents State Farm might have seen from the attorney
 7 general. Maybe that's where that comes from, is maybe
 8 Renfroe knows what documents State Farm has seen from their
 9 attorney general. But there is a strong implication in
 10 footnote 14 that somehow connects State Farm's knowledge of
 11 the documents to this injunction.

12 THE COURT: Well, I've heard testimony about or with
 13 reference to a global settlement. And while I'm not under
 14 the admonition that a juror might be under not to expose
 15 himself to the media, I'd like to think that I'm not
 16 influenced by what the New York Times says or The Birmingham
 17 News, but that doesn't mean that I don't read them
 18 occasionally.

19 MR. HAWLEY: Yes, sir.
 20 THE COURT: And if you do read the newspaper, and I
 21 didn't see the 20/20 story until I saw it on the television
 22 in this courtroom, so that's the first and only time I've
 23 ever watched 20/20. I'm not bragging. I'm not complaining.
 24 That's just a fact, I did see it here for the first time.
 25 But I do watch television news from time to time and I read

1 the newspaper, which means that I have read news stories
 2 about the Mississippi case that Mr. Scruggs has, and which
 3 there's testimony about, and the complaint was filed down
 4 there.

5 I don't know how important to this case that case is and
 6 what that case is as to where it is. I asked and you told me
 7 what the situation was in the Eleventh Circuit on the case,
 8 because if the Eleventh Circuit tomorrow said that the
 9 injunction was inappropriate, then we've been wasting our
 10 time, which is one reason why I have not pushed you anymore.
 11 I was waiting for them and hoping they would decide it one
 12 way or the other. But they didn't and haven't.

13 But we know what's happening in Atlanta on a collateral
 14 matter. We don't know and I don't know exactly what the
 15 status is other what I read in the newspaper, that the
 16 settlement did not eventuate, and I don't know when or if it
 17 ever will.

18 MR. HAWLEY: Your Honor, I can't speak to that.
 19 If I may, I'd like to jump back into December and post
 20 injunction and where we were in those efforts.

21 THE COURT: All right.

22 MR. HAWLEY: Your Honor, we became aware of this
 23 letter from the attorney general to Mr. Scruggs late in that
 24 week, and we heard some argument about when we made that
 25 aware through correspondence with either Ms. Stanley or Mr.

1 Held. On Thursday of that week, the 14th, I became concerned
 2 about that letter once I learned about it. Okay? Hadn't
 3 seen it. Became concerned about it because I didn't know the
 4 import of it.

5 And so, Your Honor, we filed a motion to stay, you may
 6 remember, on Friday the 15th. And in that motion to stay,
 7 which is Document 63 in the court's record, we said -- and I
 8 don't have the paragraph number; I apologize -- "Upon
 9 information and belief, the Mississippi Attorney General
 10 recently requested that The Scruggs Law Firm produce to the
 11 Attorney General's office all documents previously provided
 12 to the firm by the Rigsbys."

13 We made that aware to the court and everyone of record on
 14 Friday of that week as soon as we learned about it. I
 15 thought that was important, Your Honor, and I didn't talk to
 16 the attorney general about it, but I became concerned about
 17 what was going on. And in our motion to stay that we filed
 18 on that day, you may recall there was an alternative
 19 provision to produce the documents to the court, to modify
 20 the injunction and produce the documents to this court
 21 instead of to counsel for Renfroe.

22 Previously, and still, I have no problem producing
 23 documents to counsel for Renfroe. But once I realized that
 24 issue was bubbling, I tried to find a way to push it off to
 25 the side so it wouldn't turn into its own issue. That's all

1 I can really say about that, Your Honor, but we did try to
 2 bring it, and I think in an appropriate way, to everyone's
 3 attention as soon as we learned about it. And it was on the
 4 very same week the injunction became effective on Monday,
 5 December 11. I think our pleading was that Friday.

6 Your Honor, moving on, I think I've already told you that
 7 in our subsequent conversations with the attorney general's
 8 office, they made it clear to us up until the grand jury
 9 appearance by the Rigsbys that that was state's evidence.
 10 That was their motive, that was their goal, that was their
 11 object.

12 After their appearance before the grand jury, the tone
 13 changed. It was maybe we can release the documents. We'll
 14 check. And then after the global settlement was announced,
 15 they've turned over the documents.

16 And again, I can't tell you what was going on in their
 17 minds, but my clear understanding at the time was: We're
 18 done with the investigation. You can have the documents.
 19 You can supply the documents to counsel for Renfroe, which is
 20 exactly what we did.

21 Your Honor, I'd like to just move on. The documents were
 22 delivered. You know when they were delivered. And their
 23 standard is clear and convincing evidence. You know that. I
 24 think as far as the Rigsbys are concerned, as far as the
 25 Rigsbys are concerned, and those are my only clients in this

1 matter, as you know, they were employed by the Scruggs
2 Katrina Group, and Cori Rigsby, on behalf of both sisters,
3 called Mr. Scruggs on or shortly after December 12th, and he
4 informed her, as he said yesterday, that he had received this
5 letter from the attorney general's office and had complied
6 with the letter and had sent the documents out by FedEx on
7 the afternoon of December 12th.

8 THE COURT: Why didn't she called him on the 8th
9 when she knew that the injunction order had been signed but
10 would not be effective until a bond was posted, if you know?

11 MR. HAWLEY: Well, Your Honor --

12 THE COURT: Of course, I don't know that I asked her
13 that or anybody else asked her that. But she's not learned
14 in the law.

15 MR. HAWLEY: Yes, sir.

16 THE COURT: But she had a lawyer. And with or
17 without a lawyer, she could read that the injunction was not
18 effective. That doesn't mean though that she doesn't know
19 it's going to be effective. It could be effective 5 seconds
20 after she notices it or 5 days after. As it turned out, some
21 less time than that, less than 5 days and more than 5
22 minutes. But when she saw what was in store, could she have
23 called Mr. Scruggs then?

24 MR. HAWLEY: Well, Your Honor, she could --

25 THE COURT: She could, but should she have?

1 MR. HAWLEY: Well, she could have --

2 THE COURT: Was there any obligation to, was there
3 any incipient, inchoate reason why she should have seen what
4 was coming and said to him before he had his conversation
5 with the attorney general: I want those documents back
6 because I'm getting ready to be under the gun just as soon as
7 that bond is filed, and it could be being filed right now.
8 In fact, it could be filed 5 minutes ago and I wouldn't know
9 it.

10 MR. HAWLEY: Yes, sir.

11 THE COURT: She could have done that.

12 MR. HAWLEY: But, Your Honor, here's the -- She
13 could have. And I think in fact she did do that as soon as
14 she was on notice of the injunction. Here's the problem.

15 You heard echoes of this in her testimony. You'll see it
16 in her transcript if you haven't read it already. Both
17 women, they went to the Scruggs Moss Point office
18 intermittently. They didn't have a big, fancy office like we
19 do with computers and e-mail and fax machines. It took some
20 days for us to get in touch with the Rigsbys to inform them
21 of the injunction.

22 You call somebody, and you've probably had instances
23 where you're not calling someone at his office, you leave a
24 message on a home answering machine or on a cell phone
25 answering machine. You might not get an answer back for one

1 or two or three days. That's common everyday life. These
2 women don't go to an office every day. You've already heard
3 that.

4 We tried to get them as soon as we got the injunction.
5 We left messages. And my recollection is that one of them
6 called us back on that Tuesday, the 12th, which was the first
7 time we actually had a conversation with one of our clients
8 about the injunction. And she called Mr. Scruggs on or
9 shortly after December 12th. That's the testimony. So I
10 think she acted promptly. I think she acted forthwith.

11 THE COURT: So there's no evidence that either of
12 the Rigsbys was aware of the actual signing of the injunctive
13 order until the 12th? So there was a gap of days there
14 between the signing of it and its being electronically
15 transmitted to your office and your contacting or making
16 contact with your clients?

17 MR. HAWLEY: Yes, sir.

18 So, Your Honor, our position again on behalf of the
19 Rigsbys is as soon as they were aware of the injunction,
20 Cori, on behalf of both of them, first reminded us that they
21 no longer had documents, none in their possession. You heard
22 that loud and clear, I think, from Cori Rigsby yesterday.
23 And they informed us, Cori did, that she had tried to contact
24 The Scruggs Law Firm and was informed the documents are gone
25 as of 5 p.m. on December 12th.

1 THE COURT: Well, I'm just winding you up.

2 MR. HAWLEY: Yes, sir.

3 THE COURT: I've interrupted you several times, and
4 we've taken more than the time than I thought, but I wanted
5 to explore some things with you or share some thoughts with
6 you.

7 Ms. Stanley in her opening made nothing of a point which
8 I want you both to address her in her rebuttal. And you if
9 you want to. Your explanation or your client's explanation
10 of the discrepancy between 15,000 documents and 15,000 pages,
11 and Ms. Stanley put 45,000 up there, and she divided it by
12 three and she got 15,000. And you put 15,000 up there and
13 divided it by three and you got 5,000.

14 There's been testimony of the first group that's 20 or
15 more and the second group is 20 to 50, which in total is less
16 than a hundred. There's been testimony, and I wrote it down,
17 and when I heard it, I don't know where it is in there, I
18 heard the figure 8,000. I've heard the figure 8,000. 8,000
19 doesn't divide by three. And I don't know exactly who came
20 up with 8,000. But it seemed to me that somebody has said
21 that if we look in all those boxes, we'll find 8,000
22 documents, not 5,000, not 5,000 plus 100, but 8,000. Where
23 did 8,000 come from? It doesn't add up.

24 MR. HAWLEY: It doesn't. Well, I think I know, but
25 I'm not certain.

1 THE COURT: All right.

2 Well, just guess along with me because I can't make 8,000
3 come up with any of the arithmetic we've talked about.

4 MR. HAWLEY: Okay.

5 Your Honor, my understanding, two things here. I think
6 Ms. Rigsby's testimony was pretty clear that she bought
7 15,000 pieces of paper, 5,000 per box. And some of that
8 paper was used to print from the computer on a printer at her
9 home. And then they used the rest of that to make duplicate
10 copies at some copying center or place. That's where I think
11 the 15,000 comes from.

12 Now, the 8,000, my understanding is remember the two
13 boxes were here that had come back from the attorney
14 general's office that we think should have been --

15 THE COURT: Whether Mr. Held and Ms. Stanley joined
16 the paranoid parade by not wanting to open them and count
17 them because everybody has got a little paranoia in this
18 case.

19 I told Mr. Scruggs to go on back to Mississippi, and now
20 we're talking about paranoia again after he was accused of it
21 yesterday.

22 But they didn't count them. They say they didn't count
23 them, and apparently except for taking the labels off, the
24 boxes are just like they were when they got there. So we
25 don't know how many documents are actually in there. And it

1 might be worth my time to have a law clerk with or without a
2 blindfold on and rubber gloves to count the documents in
3 there without looking as to what they are or evaluating them
4 for any evidentiary value for the attorney general of
5 Mississippi or the United States and just see how many there
6 are. It might tell us something. I don't know whether it
7 would tell us anything.

8 I'll ask Ms. Stanley the same question or let her answer
9 it when she gets back up, and I'll let Mr. Rogers answer it
10 too. Does any party to this proceeding have any objection to
11 Mr. Stump, who is my Harvard Law School graduate that I
12 referred to yesterday, count the documents without looking at
13 what they are. If there are two documents together with a
14 staple or ten documents together with a staple, my
15 instruction to him, if you concur, is to count the full
16 document as one, but to make a separate count of all the
17 pages so that we would have a number of documents that might
18 or might not be the same as the number of pages, so I would
19 know and I could share with you from those boxes the exact
20 number of pages and the exact number of separate documents
21 that seem to be separate as if they had some integrity of
22 their own.

23 Do your clients have any objection to that?

24 MR. HAWLEY: Your Honor, I'd probably want to confer
25 with Mr. Rogers, but I don't have an objection. Here's the

1 problem I see in that. My understanding --

2 THE COURT: I see a lot of problems.

3 MR. HAWLEY: Well, one is that I think when you
4 start looking at all the documents that have come in, there's
5 going to be a lot of duplication. And I think if the
6 original set was 5,000 and someone else had a subset of it,
7 and then turned that in --

8 THE COURT: Well, I think maybe you are suggesting
9 that if I found 8,000 in there, we'd have to find out whether
10 3,000 of them are duplicates so that that makes your
11 arithmetic come alive.

12 MR. HAWLEY: That's exactly right, Your Honor.

13 THE COURT: Which may be the reason I was going to
14 do it. It might be subconscious.

15 MR. HAWLEY: It's good practice for a young lawyer
16 who is about to head for a big firm.

17 (Laughter.)

18 THE COURT: Well, I don't know whether that would be
19 worthwhile, but I'm having a hard time finding 3,000
20 duplicates which would make 8,000 somehow, create the figure
21 8,000. And you all may remember, and maybe somebody can
22 tell me, who first said 8,000? I think it's been said more
23 than once.

24 MR. HAWLEY: Your Honor, I'll let Ms. Stanley or Mr.
25 Rogers address that. I don't know where that number came

1 from originally.

2 THE COURT: I believe you've told me everything you
3 need to tell me. You have two more things?

4 MR. HAWLEY: I've got two more things, Your Honor.

5 THE COURT: All right. Tell me.

6 MR. HAWLEY: Three things.

7 The first thing is we stand by the brief that we
8 submitted. I think it goes through the clear and convincing
9 evidence standard, the points and authorities that are
10 relevant including lack of possession being a serious factor
11 in the inability to comply with the injunction, which is
12 another standard.

13 On behalf of the Rigsbys, again, once the documents were
14 sent to the attorney general on December 12th, they had no
15 ability to comply because the documents were gone and they
16 had sought the documents from their employer.

17 But perhaps most important, Your Honor, I want to go back
18 to -- and this is very brief -- the October 5th transcript
19 here in this courtroom. And Your Honor was musing or
20 thinking about where this lawsuit might go and the documents
21 and the search for the documents and who controlled the
22 documents. And I'm just quoting from Page 24. I'm quoting
23 Your Honor. "And so not wanting to go to jail, they" -- the
24 Rigsbys -- "could say, Mr. Scruggs" -- and they could prove
25 it to me by showing me the letter they wrote to Mr. Scruggs,

1 with the demand letter -- "Judge Acker says I must ask you
2 and tell you to return them [to me]. And let's say they did
3 that. They would have discharged their obligation to me."

4 Now, they did not write a letter, but they did through
5 Cori Rigsby make that demand, and the documents were gone by
6 that point.

7 Secondly, and that's from the October 5th hearing. Your
8 Honor, I want to go back again to the order of this court
9 directing us on February --

10 THE COURT: You call that a demand. I don't know
11 that Ms. Rigsby has testified that she used that word.

12 MR. HAWLEY: I stand corrected. I think request is
13 probably a better --

14 THE COURT: She asked for them, and there is a
15 difference. And I don't know how significant the difference
16 might be, but I don't remember any testimony about --

17 MR. HAWLEY: Well, if he had had the documents and
18 said something in response to that other than, "Here they
19 are," that request might have become a demand. But he didn't
20 have the documents, and so I think that's really a moot point
21 whether it's a request or a demand.

22 But the final point, Your Honor, is going back to your
23 order to us on February 8th: "Defendants in the
24 above-entitled cause are hereby ordered to notify the Court
25 of Appeals that they have complied with the mandatory

1 preliminary injunction from which they appealed." Period.
2 So that sentence is a two-sentence order: "This court does
3 not purport to decide the significance, if any, of this fact
4 upon the appeal, but believe the Court of Appeals should be
5 advised of it."

6 We think that as of this date we've been informed
7 properly that the Rigsbys, by getting these documents back
8 from the attorney general of Mississippi, have complied
9 completely with the injunction because they didn't have
10 copies from batch one, we believe. I understand your
11 qualification on that from the testimony. They didn't have
12 copies from batch two. Their only copy from batch three was
13 at The Scruggs Law Firm as of August 1st, and he was their
14 employer. They got those documents back through counsel
15 because they were held so long by the attorney general of
16 Mississippi. But we think that we have complied. We think
17 that the court at least in early February told us we
18 complied, and we think that this surely is hard to rebut
19 under the clear and convincing evidence standard.

20 Thank you, Your Honor.

21 THE COURT: Mr. Rogers.

22 MR. ROGERS: Yes, Your Honor.

23 MR. HELD: May I be excused for just a minute?

24 THE COURT: You may. Let's take a 5-minute
25 break.

1 (Discussion off record.)

2 THE COURT: I think let's take an hour for lunch.

3 Let's just go ahead and take an hour.

4 MR. ROGERS: Yes, sir.

5 (Lunch recess from 11:58 a.m. to 1 p.m.)

6 AFTERNOON SESSION

7 THE COURT: Keep your seats.

8 I believe it's your turn, Mr. Rogers.

9 MR. ROGERS: Yes, sir.

10 MR. HELD: Judge, before Bruce starts, could I raise
11 one point?

12 THE COURT: Sure.

13 MR. HELD: Yesterday afternoon there had been
14 mention of an engagement letter with the unknown attorney and
15 Mr. Scruggs and the Rigsby ladies, and you had asked that --
16 or stated that you would like to see a copy of it. And we
17 would too.

18 THE COURT: Do you have a response to that as to
19 whether what you've done to develop any such item?

20 MR. ROGERS: Yes, sir. There is no -- He described
21 it as an engagement letter. There is no engagement letter
22 per se. The court was inquiring about whether or not there
23 was some sort of a fee agreement. There is no signed fee
24 agreement, as Ms. Rigsby has testified. I do have a blank
25 fee agreement with fill-in-the-blanks that would potentially

1 apply to that April representation.

2 Your Honor, that fee agreement actually discloses the
3 nature of an action that is pending that is under seal in
4 Mississippi. And so we would object to it and further just
5 object on the grounds that the plaintiff rested and the
6 evidentiary matter is closed.

7 THE COURT: Well, I don't know that that would
8 preclude it since it was asked about. But you are telling me
9 and representing to me as an officer of this court that the
10 representation which that might reflect --

11 MR. ROGERS: Yes, sir.

12 THE COURT: -- whatever it otherwise might say is a
13 matter that is under seal?

14 MR. ROGERS: Yes, sir.

15 THE COURT: Is that a state court seal or a federal
16 court seal?

17 MR. ROGERS: It's from the federal court in
18 Mississippi, and I have a letter from a magistrate-judge in
19 Mississippi that allows for me or Mr. Hawley on behalf of the
20 Rigsbys to tell Your Honor more about that proceeding, but it
21 would be only ex parte, and I was hopeful we wouldn't have to
22 go down that road. And we did not yesterday as a result of
23 the evidentiary proceeding, and see no reason that it's
24 particularly helpful to this court under the circumstances.

25 THE COURT: Well, I'm going to take it as it is

1 without access to that.
 2 MR. ROGERS: Yes, sir.
 3 THE COURT: And we won't have an ex parte inquiry
 4 into it. So to the extent that the plaintiff wants to object
 5 to that or except to it, you've got it, you have your
 6 exception to my ruling on that.
 7 MS. STANLEY: We would like to note the exception,
 8 Your Honor.
 9 THE COURT: All right.
 10 MR. ROGERS: May I proceed, Your Honor?
 11 THE COURT: You may.
 12 MOVANT'S CLOSING ARGUMENT
 13 MR. ROGERS: Bruce Rogers on behalf of Mr. Scruggs
 14 and The Scruggs Law Firm, Your Honor.
 15 The 8,000 number of pages was a representation that I
 16 heard from Renfroe's counsel yesterday. It's the number of
 17 documents that have now been returned by or on behalf of my
 18 client as a part of this proceeding.
 19 And it was represented that those boxes that were brought
 20 representing 8,000 documents, that's consistent with the
 21 5,000 more or less in connection with the data dump plus the
 22 few others that may have been delivered by the Rigsbys and
 23 any copies that were made as part of the due diligence
 24 efforts to get the documents away from The Scruggs Law Firm
 25 and the Group.

1 THE COURT: That doesn't answer my inquiry, which
 2 has been responded to in a way by Mr. Hawley by counting
 3 those documents to see how many there are.
 4 MR. ROGERS: And our position on that, Your Honor,
 5 is those documents are not in evidence. They were not
 6 offered into evidence, and I struggle with what useful
 7 purpose would be served by that.
 8 They have undertaken no analysis of the documents that
 9 were returned. They didn't offer them as part of this
 10 contempt hearing.
 11 THE COURT: Well, you are telling me then that the
 12 only time that I heard the words eight thousand, that's two
 13 words, eight and thousand. Or it might be a hyphenated word,
 14 eight-thousand. Those words, have I only heard and you've
 15 only heard from Renfroe's counsel?
 16 MR. ROGERS: That's what I heard from Ms. Stanley as
 17 a representation of the number of documents that have now
 18 been returned. Whether it was stated in some other capacity,
 19 I don't remember.
 20 THE COURT: So if she said that and if that's the
 21 only place I heard it, you don't know where she got it or can
 22 deduce where she got it?
 23 MR. ROGERS: I'm assuming that they made some
 24 attempt to count the documents whether that be item by item
 25 or just some estimate.

1 THE COURT: Well, I don't know what she's going to
 2 say about that because I inquired from Mr. Hawley about where
 3 the 8,000 came from. I couldn't remember exactly where it
 4 came from, but I wrote it down.
 5 MR. ROGERS: Yes, sir. And I believe Ms. Flowers
 6 will support my recollection.
 7 THE COURT: Well, maybe she can find, her computer
 8 can find, 8,000 somewhere in there.
 9 MR. ROGERS: Yes, sir.
 10 THE COURT: But at any rate, all right, let's go
 11 back to where you were.
 12 All of you have stayed within your time limits except for
 13 me. We won't count my remarks.
 14 (Laughter.)
 15 MR. ROGERS: Plaintiff's Exhibit 9, Your Honor, you
 16 asked about why the Mississippi attorney general wanted a
 17 duplicate set, and that letter explains that. And in that
 18 letter the assistant attorney general for the state of
 19 Mississippi raises a concern that there be a possibility of
 20 disclosure of those documents to the wrong party.
 21 And, Your Honor, I know you undertook reasonable
 22 protections in your order. I've read them. Notwithstanding
 23 those protections, then I think absolutely inadvertently one
 24 of the sets of documents that we returned were in fact
 25 scanned and e-mailed to Renfroe directly. And this court is

1 aware of that because there was a letter saying oops.
 2 We're not making that an issue. I'm only pointing out
 3 that despite the safeguards you built into your order, a
 4 disclosure did occur, although we believe inadvertently. But
 5 it did happen, for whatever that's worth. So you alluded to
 6 paranoia. Perhaps it was not completely unfounded.
 7 Your Honor, belatedly perhaps in your mind, my client,
 8 Mr. Scruggs and The Scruggs Law Firm, have endeavored to
 9 comply with your injunction and return all documents. He
 10 basically divested himself of the documents in question here
 11 in December by giving them over to the Mississippi attorney
 12 general. Whether that was a proper interpretation of your
 13 order is obviously for you to decide.
 14 And then when it became apparent that Your Honor
 15 interpreted your order to include Mr. Scruggs and to enjoin
 16 him and his law firm from either having access to the
 17 documents or any use or reference to the documents, he
 18 endeavored to get the Scruggs Katrina Group to divest itself
 19 of the documents and undertook reasonable efforts to do that,
 20 all reasonable efforts, and that has in fact occurred. And
 21 that comes back to the 8,000 pages of documents that have
 22 been delivered back.
 23 Now, Your Honor knows that getting other law firms to do
 24 things can be like herding cats, so it can be a difficult
 25 endeavor. But it's happened. It's been done and actually

1 went outside the scope of the Scruggs Katrina Group.
 2 Your Honor has only taken the step of saying that Mr.
 3 Scruggs and his law firm are subject to the injunction.
 4 You asked Ms. Stanley is the Scruggs Katrina Group part
 5 of your interpretation of the order. She said, yes, she
 6 said, I'm afraid you would say that, but no pleadings have
 7 been filed as it relates to that group. And my point is,
 8 he's gone beyond that layer of just himself and his law firm
 9 and we brought the documents back, we brought disks back. We
 10 have endeavored, my client has endeavored --
 11 THE COURT: You say brought disks back. My
 12 understanding is that his law firm didn't create the disks.
 13 MR. ROGERS: No, sir. The law firm involved in the
 14 April representation did.
 15 THE COURT: So that that is like herding cats once
 16 you get things on the disk?
 17 MR. ROGERS: And, Your Honor, the point is, all
 18 reasonable efforts have been undertaken. There is no
 19 evidence in this proceeding before Your Honor of a failure to
 20 comply, and the civil contempt is a coercive, futuristic
 21 remedy: You haven't complied. I'm going to now really make
 22 you comply.
 23 There's no evidence of a failure to comply. This court
 24 has always had a reputation as long as I've been practicing
 25 for not suffering fools, for not tolerating games. You have

1 a preference for fairness and truth. That's always been my
 2 experience. You also have a preference that courts not be
 3 used for some sort of hidden agenda.
 4 Your Honor, if Renfroe was in a true search for the
 5 documents, before they came in here with this contempt
 6 proceeding and before they brought evidence to Your Honor in
 7 an attempt to meet that high burden of clear and convincing
 8 evidence, maybe they should have, maybe they would have
 9 undertaken additional efforts to determine whether all
 10 documents had been returned.
 11 No deposition was taken, although there was an overture
 12 that Mr. Scruggs would submit himself to a deposition if
 13 Renfroe's counsel chose to do so. Not done. Never asked to
 14 come to this court for purposes of this proceeding. Nobody
 15 ever called me or Mr. Bainbridge and said, "We want to make
 16 sure Dick Scruggs is in court." He's here voluntarily. He
 17 came to submit himself to Your Honor for this purpose.
 18 They never asked for access to his offices, Your Honor.
 19 He's been practicing law for more than 30 years. He fully
 20 understands and embraces his duty to this court and other
 21 courts in which he practices. He has not been accused of
 22 contempt before now.
 23 Your Honor may be aware, and I'm sure is aware, either
 24 from your own research or that of your law clerk, of the
 25 Romero case that was decided on March 14th in the Eleventh

1 Circuit, which speaks to criminal contempt. And the
 2 significant thing in Romero for purposes of today is that the
 3 recognition that I believe Your Honor believes and the
 4 Eleventh Circuit has recognized, is that most judges
 5 recognize and respect courageous, forthright, lawyerly
 6 conduct, and proceedings regarding contempt, demand,
 7 deliberateness and caution. And we believe Your Honor
 8 believes those principles.
 9 I'll conclude the first part of my closing by saying
 10 this. Ms. Stanley stood up here this morning and said to
 11 Your Honor in closing: "We cannot know" -- I wrote that down
 12 in quotes -- "we cannot say" -- I wrote that down in
 13 quotes -- "whether all the documents have been returned." I
 14 have never heard a more clear admission, and clear and
 15 convincing evidence is lacking.
 16 If you don't know, you can't meet that burden. This
 17 court should summarily deny any request for civil contempt on
 18 that basis. They made no efforts to try to know. And why is
 19 that? Maybe there is some other agenda at work here, Your
 20 Honor.
 21 The next part of my closing, and I'll be brief, is
 22 consistent with our written response that we served in
 23 February, Your Honor. We do not believe that the delivery of
 24 Mr. Scruggs' documents on December 12th violated your
 25 injunction. It was not intended to be a violation of your

1 injunction. I understand we may have a disagreement. I
 2 heard comments on January 19th loudly and clearly.
 3 In the context of your hearings in October and November
 4 and a review of those transcripts by Mr. Scruggs and in the
 5 reading of the language of your order, it was his further
 6 belief that he was not violating your order, he was not
 7 subject to Your Honor's injunction, and he proceeded to do
 8 what he did because he thought he had either himself in
 9 control of the documents or the attorney general had control
 10 of the documents.
 11 The evidence, I believe, established that he acted
 12 independently. He was not aiding and abetting the Rigsby
 13 sisters in trying to evade your injunction. He's not their
 14 agent for purposes of this case, he's not their attorney in
 15 this case, and he's not somehow acting in concert or
 16 participation with them.
 17 Your Honor has distinguished the Doctor's Associates
 18 case, the Second Circuit case from 1999. And like my
 19 partner, you go back to these older causes that don't count
 20 anymore. And I'm being facetious obviously, Your Honor, but
 21 the Doctor's Associates case is very persuasive here. And
 22 you said in your January 19 order, you said, "Apparently Mr.
 23 Scruggs was the attorney or agent for the Rigsbys." You
 24 said, "Not currently clear how events unfolded."
 25 Mr. Scruggs came here, Your Honor, respectfully as an

1 officer of the court to make you fully aware and to submit
 2 himself voluntarily of how these events unfolded. Good, bad,
 3 or indifferent, he submitted himself. And that stands for a
 4 lot.
 5 Your Honor, we established, it wasn't our burden, but we
 6 established that unless the documents have somehow been
 7 submitted in connection with a judicial proceeding, either
 8 this April representation or in some of the other cases
 9 against State Farm that are pending where they were attached,
 10 Mr. Scruggs has said, I believe I have divested myself of all
 11 the documents and I believe I've gotten those back from the
 12 Scruggs Katrina Group. And I've gone beyond that, even
 13 beyond the scope of what has been discussed in your courtroom
 14 prior to today, I've gotten more documents back.
 15 Your Honor, holding him and his law firm subject to your
 16 injunction as a non-party is not supported by what we believe
 17 is persuasive case law, for example, the Doctor's Associates
 18 case. It does absolutely interfere with Mr. Scruggs' ability
 19 to represent his hundreds of other clients against State
 20 Farm. You anticipated it, Your Honor. You said it was a can
 21 of worms. Your first instincts are being proven correct in
 22 my judgment.
 23 THE COURT: Well, let me elaborate on that or extend
 24 that thought on the can of worms because as we discussed, or
 25 I discussed, yesterday, a finding of civil contempt would

1 require a sanction which is lifted when compliance is
 2 obtained is coercive.
 3 MR. ROGERS: Yes, sir. I would agree with that
 4 analysis.
 5 THE COURT: Which would mean, I think, and Ms.
 6 Stanley can respond to this when she has an opportunity, but
 7 upon finding that the first time that not all the documents
 8 have been returned.
 9 MR. ROGERS: And we say they haven't met their
 10 burden; they've divested.
 11 THE COURT: Well, I know what you say on that. But
 12 to get to the next finding, I would impose an injunction to
 13 say and you will be fined a dollar a day or a million dollars
 14 a day until you do. The can of worms gets larger and more
 15 wiggly because your client has said and the Rigsbys have said
 16 that they have given them all. And if I find to the
 17 contrary, then I'm going to find that they have not, and I
 18 would make them come up with the ones that they haven't come
 19 up with.
 20 And I don't know how I'm going to find out later, if I
 21 ordered them to do that, when and if they've done it. I'd
 22 say if I were to put a daily fine on them like most civil
 23 contempt orders say, they usually don't put somebody in jail.
 24 They usually fine them per day until they comply. At least
 25 that's one remedy.

1 Well, they could all scurry back to their respective
 2 places and agonize in their drawers and see if they can't
 3 find one more piece of paper. Of course, we all know now
 4 that nobody has inventoried, at least I haven't, unless I get
 5 around to doing it, those documents in there to see how many
 6 there are and what they are, because I told Mr. Scruggs, your
 7 client, you haven't complied, and you better comply, and if
 8 you don't comply, you are going to be fined so much per day.
 9 And he goes back and he finds two or three pieces of paper.
 10 I don't know if he finds them and sends them to Mr. Held or
 11 to me whether we're going to find that we've already got
 12 them. I don't know. He probably doesn't know.
 13 And that's just another one of the pieces of the case
 14 that is a part of the can.
 15 MR. ROGERS: Well, then, Your Honor, respectfully, I
 16 draw a distinction between the Rigsby sisters and Mr.
 17 Scruggs. He has a duty in representing hundreds of other
 18 clients in his complaints against State Farm in Mississippi.
 19 Enjoining the Rigsbys from not only divesting themselves of
 20 the documents from any records or use of the information from
 21 those documents is one thing. Enjoining Mr. Scruggs and his
 22 law firm from any reference or use to the information derived
 23 from those documents, any use of that information furthers
 24 that can of worms because it in effect says in a different
 25 proceeding --

1 THE COURT: Well, there's a difference between the
 2 two cans of worms, the civil and criminal can, and you are
 3 talking about the criminal can now, I think.
 4 MR. ROGERS: I'm just talking about --
 5 THE COURT: I'm talking about whether a civil
 6 contempt order would be coercive, and which would mean that
 7 something is there to be coerced. Something hasn't been done
 8 that must be done, shall be done. And exactly what that
 9 consists of is the can of worms that I'm worried about or the
 10 part of the can of worms.
 11 MR. ROGERS: Well, Your Honor, there is no evidence
 12 by their own admission that there are additional documents.
 13 Our client has undertaken to get all those documents back and
 14 any copies even beyond the scope of what I believe your
 15 injunction was designed to cover. My point is, when he walks
 16 into a courtroom in Mississippi -- Well, let me turn it
 17 around another way. I don't think he would want a
 18 Mississippi judge limiting material information that could
 19 come before Your Honor that bears on the issue you're having
 20 to decide. And if the injunction is determined to be
 21 applicable to Mr. Scruggs, he may be prohibited from carrying
 22 out his duty to his clients. He may not be able to refer to
 23 information. Even if he gets the same documents in the
 24 normal discovery process, Your Honor's injunction says you
 25 can't use that information and you can't refer to it. That's

1 the can of worms I see developing in broadening the scope of
2 your injunction to Mr. Scruggs and his law firm and beyond
3 that. And that's the concern.

4 I think it's unintentional on Your Honor's part. I don't
5 believe you are trying to interfere in that way. There's no
6 evidence that he took a Renfroe document given to him by the
7 Rigsbys and stapled it to a pleading sometime in the last 60
8 or 90 days and dropped that into court. There's no evidence
9 whatsoever about that, because it didn't happen. In December
10 he thought he had given all of the documents away, and he
11 went to the other members of the group and got back what they
12 had and then beyond that.

13 So my point is that the scope of the injunction under our
14 interpretation of Rule 65 should not apply to him and his law
15 firm. He was not acting in a capacity that Rule 65
16 contemplates a non-party can be pulled in to a proceeding.
17 He submitted himself directly to Your Honor voluntarily for
18 that purpose, and we ask that there be an order --

19 THE COURT: Well, you distinguish between Mr.
20 Scruggs and his law firm and the Rigsbys, and the Rigsbys are
21 his consultants and on his payroll. Ordinarily a consultant
22 who is a serious consultant and an important adjunct to the
23 accomplishment of the purpose of the undertaking would have
24 access to, would use, would be asked about documents.

25 And that gets back to use. And it may well be that

1 interpretation, a broader interpretation, of use if it's only
2 applied to the Rigsbys, will end up precluding their
3 consulting agreement. That's just another little can of
4 worms.

5 MR. ROGERS: I think the consulting agreement is
6 broader than the claim against State Farm --

7 THE COURT: Well, it may be. And it may be that you
8 would have to renegotiate it to build a Chinese wall of some
9 sort. There are just all kinds of things here.

10 Well, let's hear --

11 MR. ROGERS: Thank you.

12 THE COURT: Thank you.

13 Let's hear from Ms. Stanley.

14 And, Ms. Stanley, agree or disagree with me and Mr.
15 Rogers about where the 8,000 figure came from that I wrote
16 down somewhere.

17 MS. STANLEY: You know, Your Honor, Jack Scruggs and
18 Rushton McClees and I were talking about that over lunch, and
19 we are not in agreement. We thought we understood that, but
20 we don't know whether because there are multiple batches of
21 the documents that have dribbled in that we have, we don't
22 know exactly what that 8,000 referred to. There is no
23 agreement among the three of us.

24 And so we would endorse the proposal to impose on Matt to
25 count those and give you an inventory of the documents that

1 are in there.

2 THE COURT: Well, if I'm going to do that, I'm going
3 to have to tell y'all the result of our count and give you an
4 opportunity to react to it in writing or by re -- I think
5 it's not just an interesting question. It's maybe a serious
6 enough part of this inquiry we're having to have that done.
7 And so with or without the agreement of the other parties,
8 I'm going to take you up on it. And I guess it came from me
9 more than from you initially as a possibility.

10 I think I'm going to call on my law clerk to conduct an
11 in camera review, and he will not communicate to me anything
12 he reads in there unless I open it again and tell you that
13 I'm doing that. His only function will be to count the
14 separate documents and count the separate pages and give me a
15 count which I will convey to you and let you react to
16 whatever that tells me. And I won't tell you what he's
17 telling me. I'll just tell you what the count is and then
18 let you both react, all react to it, and I'll react to it
19 separately to the extent I think it has any materiality.

20 Well, I think the fact that they haven't been counted or
21 may not have been counted, I think, is worth our counting
22 them.

23 Do you want to get your objection in over having given it
24 to you?

25 MR. ROGERS: I'm actually coming up with this one on

1 my own, Your Honor. That is, that I would ask that Your
2 Honor review the transcript and Ms. Stanley's representation
3 to the court first before accepting today's version, which is
4 we're not really sure where that came from, and then
5 determine the --

6 THE COURT: Well, it doesn't make any difference for
7 the purposes of my ruling on this where it came from, what
8 the genesis is.

9 MR. ROGERS: Then we would ask for the exception.

10 THE COURT: But I think it's important for me to
11 know how many are in there and for you all to know.

12 MS. STANLEY: We will have the documents delivered
13 to the court tomorrow morning, all of the documents that have
14 been delivered to us including the ones that were delivered
15 yesterday.

16 THE COURT: All right. There were some in folders
17 which you have looked at, or that is, counsel. You had the
18 right, eyes only. I'm talking to two people, Mr. Held and
19 Ms. Stanley. You had the right to look at them, but you
20 didn't have the right to share them with anybody. Now you
21 have the right and the obligation to share them with me. And
22 Mr. Stump is me, is I, because when he looks, I'm looking.
23 And when he counts, I'm counting.

24 MR. ROGERS: And, Your Honor, just my objection
25 again is that they were not offered into evidence. And it

1 was the plaintiff's burden of proof, and Your Honor is now
2 sort of taking the documents and carrying forward potentially
3 evidentiary matters that are in violation of your own order
4 about the process to be followed there.

5 THE COURT: Well, to the extent that I'm violating
6 it, I'm amending it.

7 MR. ROGERS: I thought you might rule that way. I
8 just want to make sure my objection was on the record.

9 THE COURT: And now includes the right for me to
10 look at it.

11 MR. HAWLEY: Your Honor, I'd like to confer with Mr.
12 Rogers before I answer that question. We did confer over
13 lunch, and I share in that objection.

14 THE COURT: All right. You've got it.

15 MR. ROGERS: And our objection is overruled?

16 THE COURT: Yes, sir, they are.

17 All right. Ms. Stanley.

18 MS. STANLEY: Your Honor, I'd like to talk first
19 about the relationship issue and whether or not there was an
20 attorney-client relationship and whether or not Mr. Scruggs
21 was in active concert with the Rigsbys. I'd like to go back
22 to the chart and point out that starting in February of '06,
23 Mr. Scruggs was retained as counsel for the defendants
24 relating to the documents.

25 The testimony yesterday was that the documents are at

1 issue, particularly the data dump documents are at issue in
2 this April representation with Mr. Scruggs and some
3 unidentified other lawyer. That those documents are indeed
4 involved in that representation.

5 We have confirmed that Mr. Scruggs has at least consulted
6 or been involved in some of the decisions or the
7 participation of this lawsuit because, for example, the
8 Scruggs Katrina Group is paying the legal bills. We know
9 that Mr. Scruggs' lawyer has been paying attention to the
10 transcripts and the rulings in this court, and he has been in
11 active concert with the defense of the Rigsbys in this
12 particular matter.

13 So it is clear that in addition to Mr. Scruggs of the
14 Scruggs Katrina Group having hired the Rigsbys as
15 consultants, as independent contractors and consultants, that
16 they have the additional relationship of the attorney-client.
17 And it is also clear from the case law that it is the client
18 that is charged with having hired the lawyer, having retained
19 the lawyer, having retained the counselor, and that the
20 client is responsible for the attorney's actions in the
21 lawsuit. That's why a client can be sanctioned for certain
22 actions that a lawyer takes in a lawsuit.

23 The activities of Mr. Scruggs as attorney for the Rigsbys
24 and as the one that participated in hiring the independent
25 contractor is not the same as an independent franchisee, the

1 kind that was at issue in the Doctor's Associates lawsuit.

2 Those are clearly distinguishable.

3 The other point that I wanted to address is the concern
4 about whether stating that there has been no accounting that
5 there is no evidence that all of the documents have been
6 offered is the same as saying that we have not met the
7 burden. That's not accurate. The challenge was to prove the
8 negative. And the only way that you can prove the negative
9 is to define the negative.

10 And the defendants relied on Mr. Scruggs' pleadings and
11 relied on his representations that he had returned documents.
12 But as it became clear, the documents continued to be
13 returned, it is very clear that we don't know what the
14 universe of the documents is. Mr. Scruggs has testified here
15 today -- or yesterday that he didn't know what the universe
16 of the documents was. Whether he testified here in this
17 hearing as to what the universe of the documents might be or
18 whether he testified in his deposition is irrelevant. The
19 point is, he doesn't know.

20 THE COURT: Well, let me interrupt there because
21 that gets to one of the cans of worms that I was raising.
22 Let's assume that I issue an order, a coercive order, finding
23 one of the Rigsbys or both of them and Mr. Scruggs, all of
24 them, in violation of the mandatory injunction, and therefore
25 would have found that they have not returned them.

1 Now, you say we can't know. And he says, and you say he
2 says that he doesn't know what the universe of them is. What
3 is going to happen is we can't predict tomorrow. We all know
4 that tomorrow may never come. But if it does come, in this
5 case just if we survive today and we're all here tomorrow,
6 and I order them to do it, obviously, I think that they would
7 feel some sort of extra pressure to do what you say they
8 haven't done, because that's what you have to be saying.

9 And they point out the burden is on you to prove that
10 they haven't complied. If I agree with you and say comply,
11 how are you or I going to know what their obligations are?
12 Is it five more pieces of paper? 10,000 pieces of paper? If
13 it's five and they give five, they are through with the
14 compulsion order. If it's 10,000, but they only give 5,000,
15 and we don't know about the others. Where are they? They
16 are in a box somewhere or they're on a disk somewhere.

17 It is extremely difficult, and you are in a bad situation
18 from a point of view of proving it. But then you would be,
19 and I would be, in a big pickle or a bigger one to try to say
20 when they didn't come up with any more after having found
21 that they haven't given me all of them and you all of them,
22 what to do about it, when to stop it, when to say they have
23 complied. It's just very difficult to envision how to go
24 from here assuming that I agreed with you that they haven't
25 fully complied.

1 MS. STANLEY: Your Honor, I would recommend a
2 two-step process on that. The first step would be for them
3 to sit down and come up with a serious inventory of who
4 they've given the documents to, to test their recollections
5 and come up with as close as possible a list that they can
6 come up with.

7 We've heard of writing categories of them, the Scruggs
8 Katrina Group, the outside lawyers like Mr. Morrow and Mr.
9 Phillips, the unidentified lawyer involved in the April
10 representation, and then media that have gotten some of them
11 and court papers that have gotten some of them.

12 THE COURT: Well, let's assume that they did all of
13 that and that I gave them time to do that without putting
14 them in jail while they were doing it, because they would
15 need to be out free to accomplish all that. So if they did
16 that and they found out by studying it and recalling and
17 getting all the information together, that before the
18 injunction, three documents, all of which are in that box
19 over there, were given to or shared with a lawyer, I don't
20 know where, Wisconsin, Louisiana, Mississippi, but that
21 lawyer has not been named and is not a part of the Katrina
22 Group hypothetically. Is it your position that in order to
23 comply with the injunction, Mr. Scruggs has to sue that other
24 lawyer to obtain their return or just asking or put the word
25 "demand" on it or just tell us about it and let us take care

1 of it?

2 What would he do under penalty of incarceration or fine
3 if it turns out that there is a document or two or ten in the
4 possession of somebody who is not his employer, is an
5 independent lawyer somewhere, and who at the time it was
6 conveyed to or delivered to or shared with that lawyer, there
7 was no injunction in place? Does he have to recover all of
8 those under the terms of the injunction?

9 MS. STANLEY: I believe, Your Honor, that he does
10 have to exercise in good faith all reasonable efforts to get
11 those documents back.

12 THE COURT: Which would mean that I would be judging
13 the reasonableness of his efforts?

14 MS. STANLEY: Yes, sir.

15 THE COURT: All right. I interrupted you.

16 MS. STANLEY: But for the Rigsby sisters taking
17 those documents from Renfroe and from State Farm, but for
18 those actions, Mr. Scruggs would not have access to them at
19 all, and therefore his ability to use those documents to
20 support his other clients' lawsuits is the heart of what the
21 Renfroes' concern is and why the Renfroes want those
22 documents back.

23 It's clear that if Mr. Scruggs is concerned about the
24 impact on using those documents in other lawsuits, it's clear
25 that there are some of those other documents out there that

1 we don't have back, which goes back to the point that I tried
2 to make initially, and that is, we need to know the universe
3 of the documents. And we can't know that because the
4 defendants and Mr. Scruggs have not made in good faith
5 reasonable efforts to determine what those are. That we have
6 asked, we have asked repeatedly starting on December the
7 14th. Renfroe started sending letters asking for the
8 documents. They've made repeated efforts to get those. Have
9 asked the Renfroes where the documents are. I asked Mr.
10 Scruggs here yesterday where the documents are.

11 THE COURT: You said asked the Renfroes. You meant
12 the Rigsbys?

13 MS. STANLEY: I'm sorry. I did misspeak.

14 THE COURT: I just wanted the record to reflect.

15 MS. STANLEY: And then one final point, Your Honor.
16 And that is, that a component of civil contempt allows for
17 restitution damages. It's not just coercive damages, but for
18 restitution as well. And if you determine that there has
19 been civil contempt and that Renfroe is entitled to these
20 damages, we'd like to have the opportunity to put on evidence
21 of the amount of restitution for which we seek in this case,
22 specifically for the attorney's fees used in trying to
23 enforce the injunction.

24 THE COURT: Well, rather than take testimony on
25 that, I don't know whether I agree with you or not on the

1 restitution as a possibility for civil contempt. And I don't
2 know what the defendants would say about that. They haven't
3 been asked to address that and they haven't.

4 But I would say this, that if you believe and assert that
5 restitution damages would be a remedy in a civil contempt,
6 whether on top of a coercive order of some sort or not,
7 because we're going to do our inventory, Mr. Stump is, and I
8 hope within a week, I'll establish from that point a briefing
9 schedule in which the parties will be allowed to respond and
10 give me their view of what the facts are with respect to the
11 number of documents in there, whatever significance you think
12 that might have. Beyond what you've already said, you will
13 have a chance to do that.

14 And at that point, since you will be going first in
15 responding to that, you'll have an opportunity to tell me and
16 to submit an affidavit or affidavits in support of any claim
17 of restitution that you think your client might be entitled
18 to. I'll permit that, but I'm not going to promise now or
19 suggest now exactly what that time frame will be. I know
20 what your problems are, and I'll accommodate those.

21 MS. STANLEY: Thank you, Your Honor.

22 THE COURT: Well, I believe I've heard more than I
23 can digest yesterday and today, and my digestion is not too
24 good right now. But I will begin the digestive process, but
25 I'm going to give y'all a chance to respond to me, and I

1 appreciate you all being here.
2 And we'll be in recess until I see you again, whenever
3 that is.

4 (Concluded at 1:48 p.m.)

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I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.

3-26-07

Virginia W. Flowers, RPR

Date