

MAR 21 2008

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF MISSISSIPPI

DAVID BREVIS, CLERK  
By: *[Signature]*  
Deputy

UNITED STATES OF AMERICA

v.

CRIMINAL NO. ~~3-08CR~~ 3:07 CR 192

DAVID ZACHARY SCRUGGS

**FACTUAL BASIS**

Should the present action go to trial, the government would prove by eyewitness testimony and documentary evidence that on or about November 1, 2007, in the Northern District of Mississippi, DAVID ZACHARY SCRUGGS, defendant herein, had knowledge of the actual commission of a felony cognizable by a court of the United States and concealed and did not as soon as possible make known to a judge or other person in civil or military authority under the United States, in violation of 18 U.S.C. § 4.

Specifically, the government would show that on or about March 15, 2007, the defendant along with Richard Scruggs and Sid Backstrom, met with Steve Patterson and Tim Balducci, and during this meeting, discussed Balducci's relationship with Circuit Judge Henry Lackey. At that time, Judge Lackey was presiding over a civil matter styled *Jones, et al. v. Scruggs, et al.* Also, at that meeting it was decided that because of his close relationship with Judge Lackey, Tim Balducci would speak to the judge in an *ex parte* manner and ask him to rule in favor of the defendants. Everyone was aware that Balducci had not made an official entry of appearance on behalf of the Scruggs Law Firm to represent them in the matter. Shortly thereafter Balducci met with Judge Lackey and discussed the *Jones v. Scruggs* lawsuit. Judge Lackey subsequently contacted the United States Attorney's office and began working with the government in an

undercover capacity.

Over the course of the next few months, Balducci met with Judge Lackey on several more occasions many of which were recorded, and on October 18<sup>th</sup> Judge Lackey gave Balducci a signed order ruling in favor of the defendants. Balducci then drove the order from Judge Lackey's chambers in Calhoun City to the Scruggs Law Firm in Oxford and left the order with the defendant, Zach Scruggs. At this time, Scruggs was aware that the order would send the *Jones v. Scruggs* matter to arbitration, and he was aware that the plaintiffs were unaware of both Balducci's involvement and that Judge Lackey's ruling was based, in part, on something other than the merits of the lawsuit; that is, Balducci's personal relationship with Judge Lackey. Scruggs was also aware that such an act deprived the State of Mississippi of its intangible right to the honest services of Judge Henry Lackey, performed free from deceit, bias, self-dealing, and concealment.

By November 1, 2007, the order Balducci delivered to Scruggs on October 18 had not yet been entered. On November 1, 2007, Balducci returned to The Scruggs Law Firm with another order, and on this date met with Zach Scruggs and Sid Backstrom in Backstrom's office. During this meeting, Balducci explained to both Scruggs and Backstrom that the order he left with Scruggs on October 18 had not been entered because before the judge had time to file it, the plaintiffs filed additional motions, and the judge believed he needed to draft an order addressing these additional filings. Balducci by this time was cooperating with the United States and was wearing an audio recorder. Both Scruggs and Backstrom spent time examining the order and discussing its contents. After receiving and examining the order, Scruggs failed to inform the firm's counsel of record of the manner in which the order had been obtained, thereby concealing

this fact from plaintiffs, whom the firm's counsel would have been bound to inform. And on November 5 an e-mail was sent via wire transmission in interstate commerce from the Scruggs Law Firm to Tim Balducci containing documents related to the order sending the case to arbitration.

Finally, the government would show that the above-described criminal activity took place in Lafayette County, Mississippi, which is in the Northern Judicial District of Mississippi.