

COPY

IN THE SUPREME COURT OF THE STATE OF MISSISSIPPI

ROBERT S SCRUGGS

V

JOE CALDWELL CLERK  
OF ALCONN COUNTY

**FILED**

APR 18 2007

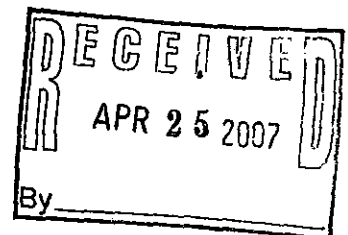
OFFICE OF THE CLERK  
SUPREME COURT  
COURT OF APPEALS

Appellant

2006-CP-1943  
~~NO 2006-0203-02-5~~

Appellee's

Appellant Rebuttal Brief



Robert S Scruggs

DATE 4-18-07

## STATEMENT OF ISSUES

1. THE APPELLEE'S HAS FAILED TO COMPLY WITH APPELLANT'S REQUEST UNDER MISSISSIPPI PUBLIC RECORDS ACT.
2. THE VENUE WAS UNLAWFULLY CHANGED FROM ALCOON COUNTY CHANCERY COURT TO LEE COUNTY, WITHOUT PROPER AUTHORITY OR PERMISSION.
3. THE CHANCERY JUDGE ABUSED HIS DISCRETION, WHICH AMOUNTED TO ARBITRARILY AND CAPRICIOUSLY ACT. WHEN HE DISMISSED THIS CIVIL ACTION WITHOUT PROVIDING APPELLANT WITH PUBLIC RECORD REQUESTED RECORDS.

## Facts of the Arguments

This exhibit-02-s clearly show that the appellee has denied provide unlegible documents, pictures, copies of money, and claimed that The originals exhibits have been sent to This Supreme Court.

At page 8 of The trial Transcripts in this case the appellee's lines-15-23, which The Chancellor falsely vouched for the appellee's that Item number-1 is a certified stamped file copy of the indictment, when in fact it is not. As well as the unsigned items in number-2 which was not sworn and signed by the presiding judge, for the team of court which alleged to have handed down this indictment.

SEE PAGE-10 AT LINE-3 -27-29 PAGE-11. LINES-1-5 "The Chancellor explains at lines 11 of page-11 "minutes are minutes; you should have official minutes in circuit court that the judge signs at the bottom."

At page-12 lines-13-19, page-13 lines-6-15, page-14 lines-21, "there is no record made of the testimony that occurs in a grand jury."

Sworn Affidavits accommodate all testimony gave before the grand jury to gain the indictment. Missing records.

At page-15 lines-15-18 "NO, SIR, I'M NOT AWARE OF ANY, AND WE CERTAINLY DO NOT HAVE ANY IN THE CIRCUIT CLERK'S OFFICE, I DON'T EVEN KNOW IF ANY EXISTS ANYWHERE," MISSING RECORDS.

MISS. CODE ANN. 9-1-33 MINUTES OF THE COURT

The minutes of the proceedings of the Supreme, Circuit, Chancery and County Courts and the Court of Appeals shall be entered by the clerk of each, respectively, in the minute book of the court, against the next sitting of the court, if practicable, when the same shall be read in open court; - - - and on the last day of the term, or within ten (10) days thereafter, the minutes shall be drawn up, read and signed.

"The duty of trial judge to sign minutes within term time is function which appertains to general administration of his office, and is not one which litigant is required to stand by and watch as to whether duty has been performed.

The questions in this case is not different, where is the signed minutes, affidavits? The law requires the record to be complete, and when it so purports to be on its face in law it is complete,

holding any thing different would bring about immeasurable evil and result in the stability of judicial records.

THE APPELLEE'S IN THIS ARGUMENT CLAIMS THAT NO SUCH RECORDS EVER HAD EXISTED. IN OTHER WORDS WHAT THE CLERK INSERTED IN THE MINUTES AFTER THE COURT HAD ADJOURNED, OR CERTIFIED WITHOUT PROPERLY AUTHORIZATION OR OFFICIAL POWER OR RIGHT IS MERE WASTE PAPER - CONSTITUTING NO PART OF THE 1997-1998 RECORDS - AND THAT NO SUCH RECORDS, AS A CONSEQUENCE, HAD ANY EXISTENCE,

IN THIS CASE APPELLANT SCRUOGGS SHOW THAT THERE NEVER WAS ANY SUCH RECORD, BECAUSE OF THE ABSOLUTE WANT OF POWER ON THE PART OF THIS CIRCUIT CLERK TO ENTER ANYTHING ON THE RECORDS AFTER THAT COURT HAD ADJOURNED, WAS ILLEGAL, FRAUDULENT PRACTICES OF DELIBERATE DECEPTION PRACTICE IN ORDER TO MISLEAD AND GAIN A UNLAWFUL ADVANTAGE, SUCH SHALL BE DECLARED VOID.

WHERE THE CIRCUIT JUDGE FAILED TO SIGN ANY OF THE MINUTES UNTIL AFTER EXPIRATION OF THE TERM, RECORD DID NOT LEGALLY SHOW THAT ANY TERM OF CIRCUIT COURT HAD BEEN HELD REQUIRED REVERSAL OF CONVICTION.

THEREFORE, THERE IS NO AUTHENTIC RECORDS PROVIDED BY APPELLEE'S NO SUCH RECORDS EXISTS. NO FINAL JUDGMENT, IN VALID LAW EXISTS.

THE APPELLEE'S SHOULD NOT BE ALLOWED FLEE AND FLEEING ON THE ONE HAND, AND DENYING THE EXISTENCE OF THESE REQUESTED RECORDS ON THE OTHER, ITS PLAIN, PAGE-15, LINES-17-18, "I DON'T EVEN KNOW IF ANY EXISTS ANYWHERE, MISSING RECORDS.

The Appellant Scauqs argues at page-16 lines-9-27. without these official records being kept as required, its easy to manufacture a indictment, which has occurred in this case. Missing Records.

At page-18 lines-10-29, page-19 lines-1-29. see page-41- lines-28-29 also page-42 at lines-1-6 at lines-20-25 The Chancellor allows the witness to certify a copy, when in fact she has no knowledge that this indictment was handed down for the particular crime.

Therefore abused his discretion as Chancellor, To allow judicial records to be altered, dates substituted, for the original showing on the original document. Thus arbitrarily, and capriciously as to law.

At page-43 lines-17-29 page-44 lines-1-29, "so who keeps these records for these transactions.?"

page-45 - at line-9-12 "we're going to authenticate this indictment. let's move forward. The Appellant Scauqs was not asking for this clerk to declare some 87 years later, a fact which should have been certified to by the court in 1997/98. Its amazing that the judge would allow such violation. impermissible act, to swear and to confirm the truth of a matter under profane oath, when she was not present in 1997/98 and could not pledge to the authenticity of this manufactured document, Appellant Requested under public records for the stamped filed 1997/98 certified copy. not altered. Therefore denied. original certified records.

At page-46 lines-17 The Appellee's CLAIM SECRET RECORDS, AT LINE 24-27 The Chancellor explains that A true bill IS A public RECORD, "AND WE'RE FIXING TO AUTHENTICATE IT FOR YOU." IN VIOLATION OF ALTERATION OF OFFICIAL DOCUMENTS. AS ONE IS THE SAME, WHICH THE DATES WAS INTENTIONAL CHANGED, TO HIDE THE FACT THAT THIS INDICTMENT WAS MANUFACTURED.

PAGE-47 LINES-12 "MR SCAGGS, THAT IS EXACTLY THE SAME THING THAT I JUST ANSWERED, WE DO NOT HAVE MINUTES."

LINES-28 "IT SHOULD HAVE BEEN 1998, AND I CAN PROVE THAT IN THE FACT THAT THE GRAND JURY DOCKET NUMBER WAS 98-016," THERE WAS AN ERROR WHERE IT SAYS 1997 MANUFACTURED INDICTMENT.

Appellant WAS INDICTED IN 1997, AND IN 1998 WITHOUT FURTHER INDICTMENT, A MANUFACTURED INDICTMENT WAS MADE, FROM THE 1997 GRAND JURY INDICTMENT, WITH A FRONT PAGE READING 1998, AND THE BACK PAGE READING 1997. THE CLERK WAS ALLOWED TO PROVIDE A ALTERED PUBLIC RECORDS, TO COVER UP THE TRUE FACTS, WHICH THIS INDICTMENT WAS KNOWINGLY, INTENTIONALLY MANUFACTURED.

The Trial Judge ABUSED HIS DISCRETION AT PAGE-50 LINES-7-13

AT PAGE-53 LINES-6-11 Appellant WAS NOT PROVIDED WITH ALL THE REQUESTED PUBLIC RECORDS AS THE APPELLEE'S CLAIMS. THEREFORE A LEGITIMATE CONTROVERSY OF A DENIAL EXISTS.

The Appellee's summary Argument is false and the Records so clearly show that all the public Records was not provided to Appellant Scroggs.

Appellant ask this Honorable Court to appoint a master to investigate these false allegations, and if they are found to be false, charges be filed to the judicial Ethics Commission, Acts done in Violations of professional Responsibility Conduct,

In Appellee's Argument, 'The Appellee was agreeable to provide a certified copy of documents.' They had been in storage and had been difficult to locate.

The Court dismissed the action on the presumption, accepting the Appellee's "word" but absence of proof, which was beyond his proper limits. To grant the Appellee's request to dismissal, which is not based on reasonable evidence, but on the word of Appellee's which put the Appellant back in the same position, before he had filed this suit under Miss. Code Ann. 25-61-1, without the requested public Records. Arbitrarily and capriciously Act.

This Honorable Court shall rule under Miss. Code Ann 25-61-15. That such willfully denying of public record is liable civilly in a sum (\$100,000) plus all expense incurred by such person bring the lawsuit.



## Relief Requested

This Honorable Court finds that the appellee's violated Miss. Code Ann 25-61-1. It should grant Relief as a Injunction. specified that the Appellee's provide fully all Requested public Records.

Appellant SCRUGGS makes a substantial showing that all the public Records Requested, has not been provided, others are not legible, and other's have been claimed to be in the possession of this MISSISSIPPI Supreme Court. making it a part of this denial.

Appellant Request a legable Reproduction of any and all public Records in the possession of this public body pertaining to Cause Number CR 98-016, under the Right of private citizens to challenge a denial of such Request.

The Chancellor's findings and Rulings in this case amounts to Abuse of discretion, manifest erroneously standards, for dismissal of this Request for public Records, before that Request had been fulfilled by the Appellee's considering the relevant factors.

It must be acknowledged by the Records that the Circuit Clerk has not fully complied with the public Records, obligations.

Therefore based on the Record evidence, This Cause should be REVERSED AND REMANDED. To provide Requested public Records.

## CONCLUSION

The Chancellor abused his DISCRETION, by dismissing Appellants public Records civil action without proper permissible evidence that scruggs had be provided All The requested public Records

This Honorable Court shall find facts in these Records that clearly show that this pre-dismissal was arbitrarily and capriciously on the part of the Chancellor, was not in accordance with the laws of the Mississippi public Records Act Miss. Code Ann. 25-61-1

This Honorable Court should consider relevant factor and The Record connected the facts and the denials made at the hearing,

In such cases as this one where a court is faced with the questions of statutory interpretation, the Supreme Court has stated that "[it] is by now commonplace that... this Court shows great deference to the interpretation given the statute by the officer or agency charged with its administration.

This Honorable Court shall not accept this unjust interpretation chosen by this Chancellor, To make a more factual determination on the word allow, with out first seen credible documentary factual evidence,

This determination by this Chancellor, findings do not rest on a credible determination, is based on evidence of word which is false and clear result in a miscarriage of justice, and violate Miss. Code Ann 25-61-1. Appellant still do not have The public Records.

Date 4-18-07

## CERTIFICATE OF SERVICE

I Robert S Scaucas Appellant, do hereby certify that I have this day mailed a true and correct copy of the above and foregoing pleading to:

Att.

Robert J Mims  
P.O. Box 1396  
Oxford MS 38655

Miss. Supreme Court Clerk  
MS Betty Septon  
P.O. Box 249  
Jackson MS 39250

Date 4-18-07

Robert J Scaucas #79641  
DCF EA-45  
2800 County Rd 540  
Greenwood MS 38930

STATE OF MISSISSIPPI  
COUNTY OF Jefferson

**AFFIDAVIT OF POVERTY**

Personally appeared before me the undersigned authority in and for the aforesaid jurisdiction, Ant J Long, M.D.O.C.# 74644, who, being duly sworn on his/her oath, does depose and sayeth:

I, Ant J Long, do solemnly swear/affirm that I am a citizen of the State Of Mississippi, and because of my poverty I am not able to pay the same in the suits, Civil Action public Record which I am (or has been commenced) about to commence, and that, to the best of my belief, I am entitled to the redress which I seek by such sort.

Respectfully Submitted,

Ant J Long  
Petitioner

SWORN TO AND SUBSCRIBED BEFORE ME, this the 19th day of April, 2007.

Sharon Jordan  
Notary Public

MISSISSIPPI STATEWIDE NOTARY PUBLIC  
MY COMMISSION EXPIRES JULY 12, 2008  
BONDED THRU STEGALL NOTARY SERVICE

STATE OF MISSISSIPPI )  
 )  
 ) -SS-  
COUNTY OF Jefferson )

**"AFFIDAVIT OF OATH"**

Personally appeared before me, the undersigned authority in and for the aforesaid jurisdiction, Jefferson, who after first being duly sworn, did state under oath as follows:

- 1) I, Paul J. Long, do hereby affirm that I am a citizen of the State of Mississippi, and do hereby state that the information contained in the foregoing Civil Action is true and correct. I state these facts under the penalty of perjury.
- 2) I bring this action in good faith and I believe that I am entitled to the relief, which I seek, by same.

Paul J. Long  
AFFIANT

SWORN TO AND SUBSCRIBED BEFORE ME, THIS THE 19<sup>th</sup> DAY OF  
April, 2007.

MISSISSIPPI STATEWIDE NOTARY PUBLIC  
MY COMMISSION EXPIRES JULY 12, 2009  
BONDED THRU STEGALL NOTARY SERVICE

MY COMMISSION EXPIRES

Sharon Jordan  
NOTARY PUBLIC

1 IN THE CHANCERY COURT OF ALCORN COUNTY, MISSISSIPPI

2 CAUSE NUMBER 2006-0203(02)S

3  
4 ROBERT S. SCRUGGS

PLAINTIFF

5 VERSUS

6 JOE CALDWELL, CLERK OF THE CIRCUIT

DEFENDANT

7 COURT OF ALCORN COUNTY

8  
9 \*\*\*\*\*

10 TRANSCRIPT OF THE PROCEEDINGS HAD AND DONE IN THE  
11 ABOVE-REFERENCED MATTER ON TUESDAY, OCTOBER 10, 2006, IN  
12 THE COURTROOM OF THE LEE COUNTY JUSTICE CENTER, IN THE  
13 CITY OF TUPELO, COUNTY OF LEE, STATE OF MISSISSIPPI,  
14 COMMENCING AT APPROXIMATELY 10:30 A.M., BEFORE THE  
15 HONORABLE RODNEY E. SHANDS, CHANCELLOR, AS REPORTED BY  
16 MS. PAM DALLAS, CERTIFIED SHORTHAND REPORTER AND  
17 OFFICIAL COURT REPORTER FOR THE FIRST CHANCERY COURT  
18 DISTRICT OF MISSISSIPPI, OF WHICH DISTRICT ALCORN COUNTY  
19 AND LEE COUNTY ARE A PART.

20 \*\*\*\*\*

21  
22 APPEARANCES:

23 Present and Representing the Plaintiff:

24 PRO SE

25 Present and Representing the Defendant:

26 HONORABLE ROBERT J. MIMS  
27 Attorney at Law  
28 Post Office Box 1396  
29 Oxford, Mississippi 38655

1           There's nothing that the judge signs. There's  
2           no judge present during the grand jury.

3           CHANCELLOR SHANDS: Right. I understand  
4           that. It doesn't say grand jury. It just  
5           says each and all records which show that the  
6           minutes were signed by the trial judge. Now,  
7           I understand it contains which indicted  
8           Scruggs, and that is not during term, but  
9           judges do sign minutes during term. Do you  
10          have a copy of the term minutes for which  
11          Scruggs was convicted, I assume?

12          BY MS. JOHNSON: I'm sure they are in the  
13          minute books where it shows that there was a  
14          judge there, if that's what he's talking  
15          about.

16          BY MR. MIMS: And I'm not sure that it  
17          would even -- that we would even know what  
18          page is the day that they consider  
19          Mr. Scruggs' case. My understanding is that  
20          it just shows the grand jury was in session,  
21          but it doesn't list the cases; is that  
22          correct?

23          BY MS. JOHNSON: Correct.

24          BY MR. MIMS: So, I mean, to be able to  
25          give Mr. Scruggs a page that shows the grand  
26          jury considered his case on that day would be  
27          impossible.

28          CHANCELLOR SHANDS: I don't know -- yeah,  
29          I understand. I don't know if he just needs

1 one that says that the grand jury considered  
2 Scruggs on that day. Understand what I'm  
3 saying to you. He says that the minutes were  
4 signed by the trial judge. Judges sign  
5 minutes in terms of court.

6 Do you have a copy of the minutes that  
7 the judge signed and the term of court in  
8 which Scruggs pled guilty, or was convicted?

9 BY MS. JOHNSON: Like a transcript? Is  
10 that what you're asking?

11 CHANCELLOR SHANDS: No. Minutes are  
12 minutes. You should have official minutes in  
13 circuit court that the judge signs at the  
14 bottom. It says that so much was considered  
15 that day, and the work was done, and the judge  
16 signs it. During term time, the judge signs  
17 every day of the term and authorizes the  
18 clerk's office to be paid.

19 BY MS. JOHNSON: We do have an opening of  
20 the day and closing of the day.

21 CHANCELLOR SHANDS: Yes.

22 BY MS. JOHNSON: It does not say what was  
23 considered that day.

24 CHANCELLOR SHANDS: I understand.

25 BY MS. JOHNSON: But we do have openings  
26 and closings.

27 CHANCELLOR SHANDS: But you should be  
28 able to go back to the date in which the  
29 conviction was obtained, and there will be a



1 copy of the minutes that will be signed by the  
2 trial judge on that date that court was opened  
3 that date and closed on that date.

4 BY MS. JOHNSON: Yes, sir.

5 CHANCELLOR SHANDS: Okay.

6 BY MR. MIMS: And we'll be glad to  
7 provide that, Your Honor.

8 CHANCELLOR SHANDS: If you would, provide  
9 a copy of that and certify it. Okay.

10 Mr. Scruggs, does this address all of the  
11 documents that you're seeking pursuant to this  
12 statute?

13 BY MR. SCRUGGS: Your Honor, I would like  
14 for an affidavit -- the affidavit which was  
15 used to gain the indictment to prove that that  
16 indictment was actually -- the indictment in  
17 which I went to trial for was actually handed  
18 down in the socalled term in which the alleged  
19 occurred.

20 CHANCELLOR SHANDS: Would not affidavits  
21 occur in justice court? Did you not have a  
22 preliminary hearing?

23 BY MR. SCRUGGS: The indictment was  
24 handed down in the circuit court, Your Honor.

25 CHANCELLOR SHANDS: Well, I noticed in  
26 some of the pleadings that were in this, it  
27 showed -- and I think that you had submitted  
28 that the justice court -- apparently, you had  
29 done some records, some requests, for them,

1 and it shows where you were bound over to the  
2 grand jury on, it looks like, July 1, 1997,  
3 with the charge of the sale of a controlled  
4 substance, aggravated assault, possession of  
5 marijuana in a motor vehicle and those  
6 matters. If you're seeking a copy of the  
7 affidavit, of course, we can let the clerk  
8 testify, and we'll do that, but I suspect that  
9 the affidavit may be maintained, if I remember  
10 from my days as a prosecuting attorney, which  
11 were a few years ago, as a part of the justice  
12 court records. An indictment is a  
13 separately-drawn instrument. I don't know  
14 that the circuit clerk has copies of  
15 affidavits.

16 BY MR. SCRUGGS: Untrained in law, I want  
17 to ask a question. When a person gives a  
18 sworn affidavit and may testify to a fact that  
19 a person has committed a crime in front of the  
20 grand jury, does it have to be under oath?

21 CHANCELLOR SHANDS: No, no. An affidavit  
22 doesn't come before necessarily a grand jury.  
23 If you've had a preliminary hearing, and these  
24 records from justice court indicate that you  
25 have, that affidavit is at the justice court  
26 level. It's bound over to the action of the  
27 grand jury, as I understand it. Then the  
28 grand jury considers it in the form of an  
29 indictment whether or not they're going to

1 present a true bill or a no true bill, whether  
2 they're going to formally charge you with that  
3 crime at that level.

4 BY MR. SCRUGGS: Well, the justice court  
5 minutes that you have here that I submitted,  
6 they are not the same individuals in which  
7 testified at the trial.

8 CHANCELLOR SHANDS: Well, you're not  
9 going to have -- are you talking about a  
10 transcript of the testimony that occurred in  
11 grand jury? Is that what you're talking  
12 about?

13 BY MR. SCRUGGS: Yes, sir.

14 CHANCELLOR SHANDS: I don't know that --  
15 I doubt that there's any such thing.

16 BY MR. SCRUGGS: Because perjury was --

17 CHANCELLOR SHANDS: Mr. Scruggs, I can  
18 assure you in my 28 years as a prosecuting  
19 attorney and appearing before grand juries  
20 twice a year every year for some 28 years,  
21 they don't keep -- it's a -- there is no  
22 record made of the testimony that occurs in a  
23 grand jury.

24 BY MR. SCRUGGS: Your Honor, is the Court  
25 required to keep the minutes and the  
26 affidavits of the testimony of the person in  
27 which who testified that a person has  
28 allegedly committed a crime is what I'm trying  
29 to ask.

1 CHANCELLOR SHANDS: Are you talking --  
2 and I'm not sure I understand. Are you  
3 seeking a copy of a transcript of where  
4 somebody testified that you committed a crime?

5 BY MR. SCRUGGS: To gain the indictment.

6 CHANCELLOR SHANDS: To get the  
7 indictment.

8 BY MR. SCRUGGS: Yes, sir.

9 CHANCELLOR SHANDS: To my knowledge, the  
10 answer to that is no. Now, I'll defer to Mr.  
11 Mims and your witness.

12 Are you aware of any recording or  
13 transcripts of testimony in the grand jury  
14 level or at the preliminary hearing level?

15 BY MR. MIMS: No, sir. I'm not aware of  
16 any, and we certainly do not have any in the  
17 circuit clerk's office. I don't even know if  
18 any exists anywhere.

19 CHANCELLOR SHANDS: Okay. And to make  
20 sure you understand, Mr. Scruggs, your  
21 complaint is brought specifically against the  
22 Circuit Clerk of Alcorn County, but I'm not  
23 aware of anywhere that that is done. I've  
24 never heard of it.

25 BY MR. SCRUGGS: So there wouldn't be any  
26 affidavits, sworn affidavits, to gain the  
27 indictments which were presented to the grand  
28 jury to gain the indictments.

29 CHANCELLOR SHANDS: There will be a sworn

1 Honor?

2 CHANCELLOR SHANDS: It doesn't give a  
3 date that it was handed down.

4 BY MR. SCRUGGS: Stamped filed.

5 CHANCELLOR SHANDS: There's a date that  
6 it was filed and recorded, but that's not the  
7 date it was handed down.

8 BY MR. SCRUGGS: Could you read that for  
9 us?

10 CHANCELLOR SHANDS: The date that it was  
11 filed and recorded was January 23, 1997.

12 BY MR. SCRUGGS: That's seven months  
13 before the crime occurred, and I never  
14 assaulted Izell Perry. I never had any  
15 contact with Izell --

16 CHANCELLOR SHANDS: I can't -- listen. I  
17 understand where you're going with this, but  
18 that's not -- you pled guilty to these crimes.

19 BY MR. SCRUGGS: No, sir. I --

20 CHANCELLOR SHANDS: And I understand  
21 where you're going with this, but that's  
22 not -- I don't hear your argument --

23 BY MR. SCRUGGS: I need the affidavit,  
24 Your Honor, to prove that --

25 CHANCELLOR SHANDS: It does say that the  
26 circuit court of vacation term was 1998, so I  
27 suspect that the stamp that was stamped on  
28 here was what was called a scribner's error.  
29 It simply means they put the wrong year.

1 BY MR. SCRUGGS: So you can make a  
2 scribe's error in an indictment and try a  
3 person. What if it was manufactured? If it  
4 was manufactured, would that constitute a  
5 scribe's error if it was manufactured?

6 CHANCELLOR SHANDS: I don't know what  
7 you're talking about, Mr. Scruggs.

8 BY MR. SCRUGGS: If you take one  
9 indictment, one half of an indictment here  
10 that was handed down in 1997, this one in  
11 1998, and manufacture and put them together.  
12 That's why I need the affidavit, Your Honor.  
13 That's what I was saying.

14 CHANCELLOR SHANDS: Does the circuit  
15 clerk's office have the affidavit in this  
16 matter?

17 BY MR. MIMS: No, sir.

18 CHANCELLOR SHANDS: They don't have it.

19 BY MR. SCRUGGS: They don't have it. So  
20 they don't have an affidavit in which they  
21 used to gain the indictment, plain and simple.

22 CHANCELLOR SHANDS: We'll put the witness  
23 on. Let's go ahead, and let's go forward at  
24 this point in time. Call your witness and  
25 let's go forward and get her under oath.

26 BY MR. MIMS: Yes, sir. Your Honor, I  
27 would call Ms. Tiesde Johnson.

28 CHANCELLOR SHANDS: Okay. Please come  
29 forward, face the clerk, raise your right hand

1 don't have those.

2 BY MR. SCRUGGS: Which one is it, Your  
3 Honor?

4 CHANCELLOR SHANDS: It's either one of  
5 the two. I mean, you've heard her testify, I  
6 assume, as to going through item by item of  
7 your request.

8 BY MR. SCRUGGS: Could I ask her that?

9 Q (BY MR. SCRUGGS) Have you provided me with the  
10 minutes?

11 A I have over 200 books of minutes. You're  
12 going to have to be specific.

13 Q The question is have you provided Robert  
14 Scruggs with --

15 A Yes. You have the court orders that pertain  
16 to you that are in the minutes. They have been sent to  
17 you; yes.

18 Q To me?

19 A Yes.

20 Q On what day?

21 A At the time that they were entered, the dates  
22 that they're entered. Do you have any court orders that  
23 have been sent to you? Those have minute books and page  
24 numbers on those orders.

25 Q What I'm requesting is a copy of the  
26 authenticated minutes of the grand jury.

27 A We do not have them.

28 CHANCELLOR SHANDS: There's no such thing  
29 as minutes of the grand jury. That's what we

1           tried to explain to you. There's no record of  
2           grand jury proceedings that you keep. Now, is  
3           that correct, Ms. Johnson?

4           BY THE WITNESS: Yes, sir.

5           CHANCELLOR SHANDS: That's my  
6           understanding. It just doesn't exist. The  
7           things that you have requested, Mr. Scruggs,  
8           they have either said they have already  
9           provided them for you, or either they don't  
10          have those records, or in some cases, they  
11          don't understand what your request is. If you  
12          can just clarify what your request is, maybe  
13          we can go forward.

14          BY MR. SCRUGGS: Okay, Your Honor. I'll  
15          try. I'm not an attorney, but what I need is,  
16          I need the minutes to verify that this  
17          manufactured indictment in Exhibit 1 is, in  
18          fact, the indictment handed down for the  
19          alleged crime in which --

20          CHANCELLOR SHANDS: We're going to  
21          certify that indictment for you. They're  
22          going to certify that copy of the indictment  
23          that was given to you, this indictment,  
24          Exhibit 1. They're going to certify this for  
25          you.

26          BY MR. SCRUGGS: So that will make that a  
27          true bill.

28          CHANCELLOR SHANDS: That will make that a  
29          certified copy.



1 BY MR. SCRUGGS: But is it a true bill?

2 Q (BY MR. SCRUGGS) That's a true bill?

3 A Yes.

4 Q Okay. I'll try to move on. Okay. The  
5 affidavit in which I'm requesting is from the witness in  
6 which alleged that I committed a crime.

7 CHANCELLOR SHANDS: Mr. Scruggs, we have  
8 talked about the affidavit. She testified  
9 that they do not maintain copies of  
10 affidavits. It's not in her file.

11 Did I understand your testimony  
12 correctly, Ms. Johnson?

13 BY THE WITNESS: Yes, sir.

14 Q (BY MR. SCRUGGS) What do you maintain in your  
15 file, please, ma'am?

16 BY THE WITNESS: Is that okay?

17 A (BY THE WITNESS) Okay. What we maintain in  
18 the file is a certified -- or a correct copy of the  
19 indictment, any discovery, those type things. Any  
20 orders that pertain to you would be found in your file.

21 Q Okay. The law says that the judicial records  
22 require the law to be kept and verified to be conclusive  
23 evidence against all existing dates of legal  
24 consequences, so you would not have the dates and the  
25 times and the witnesses who appeared before the grand  
26 jury. You don't have that.

27 A No, we do not have what is presented to the  
28 grand jury. That is presented by the D.A.'s office. If  
29 you choose to go to trial, those things are administered

1 as exhibits that were presented during trial. We have  
2 those, a copy of those, that we said that we would give  
3 you a copy of all of those.

4 Q Excuse me. So you are telling me that when  
5 the grand jury is in session, the prosecutor is there,  
6 the judge is there, and the clerk is there --

7 CHANCELLOR SHANDS: The judge is not  
8 there during grand jury.

9 A (BY THE WITNESS) Neither is the clerk.

10 Q The clerk is not there during grand jury?

11 A No.

12 CHANCELLOR SHANDS: No.

13 Q (BY MR. SCRUGGS) So the clerk does not present  
14 the indictment to the judge to sign at the adjournment  
15 when the true bill is handed down? Do you know anything  
16 about it?

17 A The judge does not sign the indictment.

18 Q A judge don't sign the indictment?

19 A No.

20 Q Who signs the indictment?

21 A The foreman of the grand jury and then the  
22 deputy clerk.

23 Q And the prosecutor?

24 A And the prosecutor, or the D.A.'s office.

25 Q So who keeps the record for those  
26 transactions?

27 CHANCELLOR SHANDS: Well, the indictment  
28 itself is the record. It's got the names of  
29 the parties that signed it.

1 BY MR. SCRUGGS: The 12 individuals who  
2 sat on the grand jury, they don't have to be  
3 documented and kept?

4 CHANCELLOR SHANDS: What are you seeking,  
5 Mr. Scruggs? Just ask her what specifically  
6 are you seeking.

7 BY MR. SCRUGGS: I am seeking to  
8 authenticate that this is the indictment --

9 CHANCELLOR SHANDS: We're going to  
10 authenticate this indictment. Let's move  
11 forward. For the tenth time, we're going to  
12 authenticate this indictment for you.

13 BY MR. SCRUGGS: All right, sir.

14 CHANCELLOR SHANDS: Next item.

15 Q (BY MR. SCRUGGS) For me to authenticate the  
16 indictment, I need the affidavits -- who would have the  
17 affidavits? You say you don't have them. Who would  
18 have them? Do you have any knowledge who has the  
19 affidavits and the book of the grand jury minutes?

20 A I would assume the D.A.'s office would have  
21 the affidavits. Whatever is presented to the grand  
22 jury, we do not have it. We do not have what's  
23 presented to the grand jury. It's presented to the  
24 grand jury.

25 Q So the clerk of the circuit court is not  
26 required to enter on the minutes opening and closing and  
27 signing of the judge.

28 THE WITNESS: I told him that I would  
29 present openings and closings.

1 CHANCELLOR SHANDS: We'll get you  
2 openings and closings of minutes.

3 BY MR. SCRUGGS: Okay.

4 A (BY THE WITNESS) But it's not going to say who  
5 was presented. It's only going to say grand jury in  
6 session such and such date, signed by a judge. There's  
7 no judge present during grand jury. There's no court  
8 personnel that's present during grand jury. As a matter  
9 of fact, as the things are presented to the grand jury,  
10 they're presented by the D.A.'s office. The D.A.'s  
11 office leaves the room while the deliberation between  
12 the grand jurors are going on. Then they knock on the  
13 door. The D.A. goes back in, and that's when they  
14 determine whether or not --

15 Q So what you're telling me, the D.A. does not  
16 have anyone to keep track of who --

17 A We have an indictment book that will say this  
18 case was presented, you know, and it will say no true  
19 bill or true bill, but that book is not public record.  
20 That book is secret. It's where --

21 Q Secret? An indictment is -- there's no secret  
22 now. The indictment has been handed down.

23 A You have a copy of it.

24 CHANCELLOR SHANDS: A true bill is a  
25 public record. You've got a copy of your true  
26 bill. We're fixing to authenticate it for  
27 you. No true bills are not public record.

28 BY MR. SCRUGGS: Your Honor, she said it  
29 was a secret indictment.

1 CHANCELLOR SHANDS: A secret no true  
2 bill. The book itself is not public record.

3 BY MR. SCRUGGS: Okay. I understand  
4 that. I understand that.

5 CHANCELLOR SHANDS: Okay.

6 BY MR. SCRUGGS: I'll try to move on.

7 Q (BY MR. SCRUGGS) Okay. Original minutes  
8 required by statute which prove that the indictment was  
9 handed down for the crime in which a person is tried,  
10 who would have those records? You would not have that,  
11 the original?

12 A Mr. Scruggs, that is exactly the same thing  
13 that I just answered. We do not have minutes. We do  
14 not have affidavits. We do not have evidence presented  
15 against you at the grand jury. We have nothing to do --  
16 we step in when the grand jury hands that indictment  
17 down. That's when we start our process. As far as the  
18 grand jury, what goes on in grand jury, we don't have  
19 that.

20 Q Yes, ma'am. I'm not going to argue with you.  
21 I'm not trying to confuse you.

22 A I understand, but we don't have that.

23 Q What I need is, I need the evidence to show  
24 that this indictment was handed down against Robert  
25 Scruggs on the twenty-third day of January, 1998.

26 A And that is the indictment that you have, and,  
27 of course, you've clarified that there was an error. It  
28 says 1997. It should have been 1998, and I can prove  
29 that in the fact that the grand jury docket number was

1 here if we need to review them while I'm here.  
2 This is simply the court's only copy. We need  
3 to make a copy to mail to him, a certified  
4 copy.

5 CHANCELLOR SHANDS: You can make a copy  
6 here before you leave and give it to him. He  
7 can carry those back with him and save  
8 postage.

9 BY MR. MIMS: Yes, sir. Is there any  
10 need to look --

11 CHANCELLOR SHANDS: I don't see any need  
12 to look for them, because that's the copy of  
13 the official clerk of the court reporter's  
14 list of exhibits that were received. They  
15 should be as a part -- and I understand this  
16 case may have gone to the supreme court. They  
17 should have been returned by the supreme  
18 court. If they were returned by the supreme  
19 court, they should be there.

20 BY MR. MIMS: Yes, sir, and, Your Honor,  
21 just for the record, the S-1 and S-2 are not  
22 in here. It was not to the jury. What's in  
23 here is S-3 through S-17 and D-18.

24 BY MR. SCRUGGS: Do you have S-7, Mr.  
25 Mims?

26 BY MR. MIMS: Yes, sir.

27 BY MR. SCRUGGS: S-8?

28 CHANCELLOR SHANDS: He has everything but  
29 S-1 and S-2.

1 BY MR. SCRUGGS: S-1 and S-2.

2 CHANCELLOR SHANDS: Those are the only  
3 things he doesn't have. Those did not go to  
4 the jury.

5 Anything further, Mr. Scruggs?

6 BY MR. SCRUGGS: No, sir, Your Honor. If  
7 the Court please, I would like to -- if I'm  
8 not satisfied, if the record is not complete,  
9 I don't want to adjourn and not receive in  
10 which -- the public records in which I  
11 requested.

12 CHANCELLOR SHANDS: Mr. Scruggs, let me  
13 put it this way. The only thing that I can do  
14 as a chancery judge is to examine and  
15 determine if the records that you seek are  
16 exempt from the public records statute or if  
17 they are included. I am making a general  
18 statement that they are to turn over to you  
19 those records that they have in their  
20 possession that are not exempt from public  
21 records.

22 BY MR. SCRUGGS: Yes, sir.

23 CHANCELLOR SHANDS: Okay.

24 BY MR. SCRUGGS: And could you clarify  
25 for the record which ones you're saying was  
26 exempt?

27 CHANCELLOR SHANDS: Well, the indictment  
28 book itself is exempt from the record.

29 BY MR. SCRUGGS: The book, and what about

1 IN THE CHANCERY COURT OF ALCORN COUNTY, MISSISSIPPI  
2 CAUSE NUMBER 2006-0203(02)S  
3

4 ROBERT S. SCRUGGS PLAINTIFF  
5 VERSUS  
6 JOE CALDWELL, CLERK OF THE CIRCUIT DEFENDANT  
7 COURT OF ALCORN COUNTY  
8

9 CERTIFICATE OF CHANCERY COURT CLERK  
10

11 I, LARRY W. MCCOLLUM, CLERK OF THE CHANCERY  
12 COURT OF ALCORN COUNTY, MISSISSIPPI, CERTIFY that I have  
13 this day received from Pam Dallas, the official court  
14 reporter for the above-styled case, the original and one  
15 copy of her transcript of the proceedings had in this  
16 matter on October 10, 2006, in Tupelo, Mississippi, Lee  
17 County, Mississippi, before the Honorable Rodney E.  
18 Shands, Chancellor, First Chancery Court District of  
19 Mississippi.

20 WITNESS my signature this 25 day of  
21 January 2007.  
22

23 Larry W McCollum  
24 Karen Jones, D.C.  
25  
26  
27  
28  
29